



# भारत का राजपत्र The Gazette of India

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सं. 16] नई दिल्ली, अप्रैल 12—अप्रैल 18, 2015, शनिवार/चैत्र 22—चैत्र 28, 1937  
No. 16] NEW DELHI, APRIL 12—APRIL 18, 2015, SATURDAY/CHAITRA 22—CHAITRA 28, 1937

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके  
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)  
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं  
Statutory Orders and Notifications Issued by the Ministries of the Government of India  
(Other than the Ministry of Defence)

कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय

(कार्मिक और प्रशिक्षण विभाग)

नई दिल्ली, 9 अप्रैल, 2015

**का.आ. 767.**—केन्द्र सरकार एतद्वारा दंड प्रक्रिया संहिता, 1973 (1974 का अधिनियम सं 2) की धारा 24 की उप-धारा (8) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए चंडीगढ़ स्थित पंजाब एवं हरियाणा उच्च न्यायालय में दिल्ली विशेष पुलिस स्थापना (सीबीआई) द्वारा जांच किए जा रहे मामलों अथवा उनसे उत्पन्न अन्य मामलों में अभियोजन, अपील एवं पुनरीक्षण का संचालन करने के लिए श्री सुमीत गोयल, अधिवक्ता को दिल्ली विशेष पुलिस स्थापना (केन्द्रीय अन्वेषण ब्यूरो) के विशेष लोक अभियोजक के रूप में नियुक्त करती है।

[फा सं 225/3/2011-एवीडी-II]

अजित कुमार, अवर सचिव

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES  
AND PENSIONS

(Department of Personnel and Training)

New Delhi, the 9th April, 2015

**S.O. 767.**—In exercise the powers conferred by sub-section(8) of section 24 of the Code of Criminal Procedure,

1973 (Act No. 2 of 1974), the Central Government hereby appoints Shri Sumeet Goel, Advocate as Special Public Prosecutor for the Delhi Special Police Establishment (Central Bureau of Investigation) in the Punjab and Haryana High Court at Chandigarh for conducting the prosecution, appeals, revisions or other matters arising out of the cases investigated by the Delhi Special Police Establishment (CBI).

[F.No. 225/3/2011-AVD-II]

AJIT KUMAR, Under Secy.

नई दिल्ली, 11 अप्रैल, 2015

**का.आ. 768.**—केन्द्र सरकार, एतद्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का अधिनियम सं 25) की धारा 6 के साथ पठित धारा 5 की उपधारा (1) के द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए कर्नाटक राज्य सरकार की दिनांक 06.04.2015 की अधिसूचना सं एचडी 65 सीआईडी 2015 के माध्यम से श्री डी॰के॰ रवि, भा॰प्र॰ सेवा जो वाणिज्य कर प्रवर्तन, कर्नाटक सरकार, बेंगलुरु में अपर आयुक्त के पद पर कार्यरत थे, की अप्राकृतिक मृत्यु से संबंधित दंड प्रक्रिया संहिता की धारा 174 के अंतर्गत दिनांक 16.03.2015 को माडीवाला थाना, बेंगलुरु कर्नाटक में दर्ज यूडीआर सं 47/2015 की जांच करने के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों

और क्षेत्राधिकार का विस्तार समस्त कर्नाटक राज्य में करती है।

[फा०सं० 228/15/2015-एवीडी-II]  
मीरा मोहंती, उप सचिव

New Delhi, the 11th April, 2015

**S.O. 768.**—In exercise the powers conferred by sub-section(1) of section 5 read with Section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Central Government with the consent of the State Government of Karnataka *vide* Notification No. HD 65 CID 2015 dt. 06.04.2015 hereby extends the powers and Jurisdiction of the members of the Delhi Special Police Establishment to the whole of the State of Karnataka for investigation of a case registered *vide* UDR No. 47/2015 U/S 174 of Cr.P.C. on 16.03.2015 at Madiwala Police Station, Bengaluru, Karnataka into the unnatural death of Shri D.K. Ravi, IAS officer, who was working as Additional Commissioner of Commercial Tax Enforcement, Government of Karnataka, Bengaluru.

[F.No. 228/15/2015-AVD-II]  
MEERA MOHANTY, Dy. Secy.

### श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 10 अप्रैल, 2015

**का.आ. 769.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार विजया बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चैन्नई के पंचाट (संदर्भ संख्या 29/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10/4/2015 को प्राप्त हुआ था।

[सं० एल-12011/93/2014-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

### MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 10th April, 2015

**S.O. 769.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 29/2015) of the Central Govt. Indus. Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the Industrial Dispute between the Management of Vijaya Bank and their workmen, received by the Central Government on 10.04.2015.

[No. L-12011/93/2014-IR(B-II)]

RAVI KUMAR, Desk Officer

### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Thursday, the 26th March, 2015

**Present:** K. P. PRASANNA KUMARI,  
Presiding Officer

#### Industrial Dispute No. 29/2015

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Vijaya Bank and their workman.

#### Between

The Regional Secretary : 1st Party/Petitioner Union  
Vijaya Bank Workers' Organization  
60/2, Big Street, Triplicane  
Chennai-600 005

#### and

The General Manager (Personnel) : 2nd Party/Respondent  
Vijaya Bank, Head Office, 41/2  
M.G. Road, Jaya Nagar,  
Bangalore

#### Appearance

For the 1st Party/Petitioner Union : In Person

For the 2nd Party/Respondent : Nil

#### AWARD

The Central Government, Ministry of Labour & Employment *vide* its Order No. L-12011/93/2014-IR (B.II) dated 18/24.02.2015 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

"Whether the action of the management of M/s Vijaya Bank, Chennai regarding not allowing the applicant Smt. Delsy Pramila to attend interview for the post of "Peon" is justifiable or not? What relief the workman is entitled to?"

2. On appearance on receipt of the notice the petitioner has filed a memo stating that the union is not proceeding with the adjudication and that the matter is not pressed.

Accordingly the ID is dismissed as not pressed.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 26th March, 2015)

K. P. PRASANNA KUMARI, Presiding Officer

**Witnesses Examined:**

For the 1st Party/Petitioner Union : None  
 For the 2nd Party/Management : None

Regional Office,  
 Pandu Nagar,  
 Kanpur. 208005

**Documents marked:****On the petitioner's side**

Ex.No.	Date	Description
	N/A	

**On the Management's side**

Ex.No.	Date	Description
	N/A	

नई दिल्ली, 10 अप्रैल, 2015

**का.आ. 770.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूनियन बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कानपुर के पंचाट (संदर्भ सं० 48/09) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10.04.2015 को प्राप्त हुआ था।

[सं० एल-12011/83/2009-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 10th April, 2015

**S.O. 770.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 48/09) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Kanpur as shown in the Annexure, in the industrial dispute between the management of Union Bank of India and their workmen, received by the Central Government on 10/04/2015.

[No. L-12011/83/2009-IR (B-II)]

RAVI KUMAR, Desk Officer

**ANNEXURE**

**BEFORE SRI RAM PARKASH, HJS, CENTRAL  
 GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-  
 LABOUR COURT, KANPUR**

**Industrial Dispute No. 48/09****BETWEEN**

The President,

Union Bank Employees Union (UP), Kanpur Unit, C/o Union Bank of India, Swaroop Nagar, Kanpur. U.P.

**AND**

The Assistant General Manager,  
 Union Bank of India,

**AWARD**

1. Central Government, Mol, New Delhi, *vide* notification No. L-12011/83/2009-IR(B-II) dated 24.11.2009, has referred the following dispute for adjudication to this tribunal.

2. Whether the action of management of Union Bank of India in making deductions from the salary of Sri D. P. Gupta on account of loan limit enhanced by the management, from Rs.1,00,000/- to Rs.1.5 Lacs without obtaining his signature as earlier limit of 1 lac was already adjusted in the year 1996, is justified & legal? To what relief workman concern is entitled to?

3. Briefly stated facts of the case are—

4. It is stated that M/s Anurag Udyog was granted CC Limit for Rs.1 Lac on 13.10.95, wherein Sri D. P. Gupta the concerned workman stood as guarantor along with one Mr. Balkrishna Gupta. It is further alleged that subsequently the above loan was adjusted by the opposite party in May 1996. The opposite party after adjusting the above cash credit limit, again enhanced the limit up to 1.5 lacs in the same account *i.e.* M/s Anurag Udyog against the guarantee of Sri Bal Krishna Gupta. It is also alleged by the union that after the adjustment of the above loan the concerned workmen automatically relinquished as guarantor at the enhanced cash credit limit allowed by the bank in favor of M/s Anurag Udyog.

5. The union has further stated that the workman has submitted a representation dated 08.10.04, mentioning therein that it is not understood to him as under what circumstances a deduction for Rs. 5000/- per month is being made by the opposite party for adjustment of enhanced limit of Rs.1.5 lac in the account of M/s Anurag Udyog. The concerned workman submitted repeated representation on the matter stating that he is neither judgment debtor nor guarantor therefore the attachment of his salary for the purpose of adjusting the enhanced limit in the account of M/s. Anurag Udyog is highly illegal and Arbitrary. When no fruitful result on the representation of the workman came out then the Union took up the matter with the opposite party *vide* its communication dated 31.05.2005 and in reply to the same the opposite party *vide* its communication dated 08.06.2005 intimated the Union that the bank is justified to make deduction from the salary of the workman, It may be pointed out here that while reply the representation of the union, the opposite party has not whispered even a single provision of rule under which the opposite party is empowered to make such deduction from the salary of the concerned workman who never stood as judgment debtor or guarantor. Thereafter the union again represented the matter before the opposite party making a clear request to stop the illegal deduction and refund the

same to the workman otherwise it will take suitable legal action against the opposite before appropriate forum of law. Again on 17.09.07, the workman represented the matter before the opposite party making a clear request not to effect the illegal deduction from his salary. It is further stated that the then Branch Manager *vide* his letter dated 08.10.04 addressed to AGM of the opposite party has clearly mention that Sri D. P. Gupta has never signed any document as mentioned as S-1 *i.e.* Letter of Guarantee for enhanced limit allowed in favor of M/s. Anurag Udyog.

6. It is also submitted that the action of the bank in effecting deduction from the salary of the workman is highly illegal and against the provisions prevailing in the bank inasmuch if it is assumed that some amount is payable the nature of liability is of civil and the salary of the workman could not be attached for any reason whatsoever, without obtaining a decree from Civil Court against the concerned workman; that the action of the opposite party is illegal, arbitrary and without jurisdiction as the loan papers alleged to be in possession of the opposite party relating to M/s. Anurag Udyog is barred by time; that the action of the opposite party is bad in law as the workman has never owed any responsibility for enhanced limit in favor of M/s. Anurag Udyog by signing any document at any point of time as such the bank is not authorized to attach the salary of the workman for the purpose of adjustment of enhanced limit granted to the above firm; that as the workman is an active trade union worker and is ventilating the grievances of co-workers before the management, therefore, the bank has taken a vindictive action against the workman; lastly it is alleged that the amount that has been deducted from the salary of the workman is a hard earned money and the workman is having a right over the same as a right of property therefore, he is entitled to get back the same from the bank.

7. On the basis of the above, it has been prayed by the union that the amount already deducted by way of illegal attachment of the salary of the workman be directed to be refunded by the opposite party with pendentelite interest @ 24% per annum. The union has further requested that since the action of the bank is illegal therefore, the bank be directed not to effect any further deductions from his salary and cost of Rs.5000/- has also been claimed by the union.

8. The opposite party has filed its reply stating therein that the workman is an employee of the bank and a loan of Rs.1 lac was sanctioned by the bank in favor of M/s. Anurag Udyog on 12.10.95, in which the workman and one Sri Bal Krishna Gupta stood as a guarantor. Subsequently the limit was enhanced to Rs.1.5 lac and the letter of guarantee was signed alone by Mr. Bal Krishna Gupta. The bank has sent notices to the borrower repeatedly on different dates and copy of the same was marked to the workman. Since the account has turned into NPA and neither the borrower nor the guarantor were paying banks dues, Sri D. P. Gupta being one of the guarantor and after sending notice to him

on 17.04.2004, bank started recovery from his salary which was the available source of recovery. It is also alleged that the concerned workman made request on humanitarian ground for less deduction from his salary and the deduction was reduced from Rs.5000/- to Rs.2000/- per month. It is also pleaded that under the provisions of Indian Contract Act, the Bank is competent to deduct the amount from the salary of the workman. The claim of the worker that he is released from the guarantorship for enhanced limit is no correct on the ground that the enhanced limit on the strength of second guarantor does not exonerate Sri D. P. Gupta from his existing liability to repay the loan arising out of guarantee of Rs.1 lac and interest thereon. It is also submitted that the workman was also guarantor of M/s. Kushmanda Tools and Castings Pvt. Limited and the borrower of the said loan account was the wife of Sri D. P. Gupta and the Guarantor of M/s. Anurag Udyog Sri Bal Krishna Gupta is one of the Director in Kushmanda Tools and Castings Pvt. Limited. This account had also become NPA and the amount of Rs.20774/- along with excluding interest of Rs. 147301. Hence, after putting a notice upon Sri D.P. Gupta a sum of Rs.5000/- from his salary was deducted and now the said account has been fully adjusted. It is also pleaded that the workman cannot be allowed to have become absolved from the liability of loan amount granted to M/s. Anurag Udyog in view of his letter dated 05.11.2005.

9. Therefore from the contents of the said letter it is amply clear that it is a clear cut admission of cash credit limit granted to M/s. Anurag Udyog hence the claim of the workman that he stood relinquished from the recovery of the amount is absolutely devoid of merit. The workman neither replied the letter of the bank nor legal notice of the bank; therefore, he cannot be allowed to claim that he stood relinquished from the loan account of M/s. Anurag Udyog.

10. The provisions of Payment of Wages Act cannot be invoked by the claimant in the facts and circumstances of the bank. It is further alleged that the very nature of reference and claim falls outside the ambit and scope of Industrial Disputes Act, as defined under section 2(k) of the Act, inasmuch as the demand of the union and the grievance of the workman is not with the relation of employment or term of employment or condition of employment or non employment, therefore, Sri Gupta cannot raise any grievance against the bank concerning the legal deduction. His remedy at the best can be before the appropriate Civil Court and not before this tribunal.

11. Lastly it is prayed that the claim of the union is devoid of merit and is liable to be rejected.

12. The Union has further filed rejoinder in the case stating therein that the reply made by the bank is totally misleading and not convincing, therefore, is denied absolutely on the ground that a cash credit limit was initially granted in favor of M/s. Anurag Udyog in the year 1995



and in the month of May 1996 the bank allowed the enhanced limit 1.5 lacs and earlier limit of Rs.1 lac was adjusted by depositing money and by executing fresh documents against the enhanced limit one Shri Bal Krishna Gupta came forward as guarantor who signed the bank guarantee papers. It has further been pleaded by the union that when a party comes in to new agreement the earlier agreement stands automatically vitiated and no cognizance can be taken on the earlier agreement.

13. It is further stated by the union that the bank has never sent any notice to the workman at any point of time and by simply endorsing on the notice that a copy of the same has been sent to the workman would not amount to believe the fact that in any such notice was ever sent by the bank on the workman. He has further pleaded that he cannot be held liable as a guarantor for making payment of enhanced loan amount granted by the bank in favor of M/s. Anurag Udyog.

14. The union has also contended that the workman has no concern or liability about the loan granted to M/s Kushmanda Tools Pvt. Limited.

15. Therefore the workman at any rate cannot be held responsible for repayment of the loan amount favored by the bank to M/s Anurag Udyog Kanpur in the absence of any relationship in between M/s. Anurag Udyog. On the basis of above it has further been prayed by the union that the claim be allowed against the opposite party and in favor of the workman.

16. In this case the Union along with claim statement has filed documents paper Nos. 3/7-3/17 and thereafter *vide* application paper No.4/1 has also filed documents paper No.4/2-4/13.

17. The opposite party has also filed documents *vide* list dated 11.01.2013 bearing paper No. 22/1-22/23. Again the opposite party *vide* list dated 02.05.2011 has further filed paper No. 17/2-7.

18. The opposite party has further filed a document paper No. 16/2 per list dated 11.03.2011.

19. Apart from filing the above documents by the parties in support of their respective claim, where as the Union has examined the concerned workman Sri D P Gupta as w.w.1 and on the other hand the opposite party bank has examined Sri B. P. Gupta as W.W.1.

20. I have heard the arguments of the parties at length and have also perused the whole records carefully. I have also anxiously gone through the schedule of reference order.

21. By a bare perusal of the terms of reference order it is quite clear that the Ministry of Labour, New Delhi, has posed a simple question before the tribunal to answer the reference as to whether the action of the management of

Union Bank of India in making deductions from the salary of Sri D. P. Gupta on account of Loan limit enhanced by the management from Rs. 1 lac to 1.5 lac without obtaining his signature as earlier limit of 1 lac was already adjusted in the year 1996 is justified and legal.

22. To answer the above points I would like to mention the actual factual position emerging from the pleadings of the parties.

23. It is argued by the Union that the opposite party has sanctioned a cash credit limit in favor of M/s Anurag Udyog for Rs.1 lac in which the workman and one Sri Bal Krishan Gupta stood as a guarantors. According to the workman the said cash credit limit was adjusted in the year May 1996. Thereafter, in the said -account the cash credit limit was enhanced to Rs.1.5 lac in which the sole guarantor was Mr. Bal Krishna Gupta as per record of the opposite party. But the bank on arbitrary considerations has started recovery of the enhanced cash credit limit from the salary of the workman without any legal authority or right.

24. As against this arguments the authorized representative for the opposite party has laid much emphasis on paper No. 3/13, 17/7 and 16/2 respectively and on the strength of these papers he has argued that the workman cannot be absolved from the recovery of the enhanced cash credit limit granted in favor of M/s Anurag Udyog.

25. I have carefully examined the documents referred to by the opposite party. Paper No.3/13 is a reply dated 08.06.2005 of the bank to the Union duly signed by Chief Manager, which is on the subject of unlawful attachment of salary of Mr. D.P. Gupta, wherein the bank has informed that we have sought comments from Law Department of our bank. We have been advised that the bank is justified to make deductions from the salary of its employee who stood as a guarantor to recover banks dues; hence attachment of salary of Mr. Gupta is not unlawful.

26. Paper No. 16/2 is an application of workman wherein by referring representation dated 08.10.2004 and subsequent reminders requested to consider his request regarding deductions.

27. Paper No.17/7 is letter dated 17.05.2004 in the form of notice addressed to the workman wherein the chief manager of the bank intimating the workman that in case he fails to adjust these accounts immediately, the bank has no other alternate except to recover the same from the 1/3rd salary payable to workman with effect from June 2004.

28. In the light of the above I have also examined the document paper No.3/16, in the light of the arguments advanced by the representative of the management in which the branch manager General Ganj Branch informed to the Assistant General Manager, Regional Office, Kanpur, that no S. I has been obtained from Sri D.P. Gupta concerned

workman (staff) for said enhancement of cash credit limit in the account of Anurag Udyog.

29. On the other hand in paragraph No.12 *i.e.* paper No.3/4 which is the statement of claim filed by the union, it has been clearly mentioned that S.1 (which is the letter of guarantee) for enhanced cash credit limit in the account of Anurag Udyog has never been signed by the workman Sri D. P. Gupta.

30. On the contrary the bank has also not filed S.1 letter of guarantee for enhanced limit so as to find out by the tribunal as to actually the workman can be held liable for adjustment of enhanced limit.

31. I, therefore, considering the facts and circumstances of the case as referred to in Para 12 of the statement of claim of the union, confirmed by paper No.3/16 filed by the union as admitted by the bank in para 2 (paper No.12/1) in the light of the reference order, it is held that no letter of guarantee ( S.1 ) was ever signed by the concerned workman for enhanced cash credit limit in the account of M/s Anurag Udyog up to the extent of Rs.1.5 lacs.

32. The Union has next argued that the bank is not competent to attach the salary of the workman for adjustment of enhanced limit in the account of M/s Anurag Udyog in the absence of any decree passed by Civil Court and also in the absence of his being a guarantor of the enhanced limit.

33. Union has also argued that as per the provisions of Section 62 of Indian Contract Act that if a parties to contract agree to substitute a new contract for it, or to rescind or alter it, the original contract need not to be performed therefore, any new documents in the shape of letter of guarantee in respect of M/s Anurag Udyog cannot bind the workman in the absence of his signature over the same.

34. It has also been argued by the union by referring the provisions of the Payment of Wages Act, 1936, that the nature of deductions that can be made from the salary of any employee has been mentioned under section 7 of the Act, which nowhere gives right to an employer to deduct or attach the salary of his employee beyond the scope and ambit of deduction referred therein. The nature of deductions made from the salary of the workman do not fall within the provisions of section 7 of Payment of Wages Act, 1936.

35. After hearing the arguments of the Union, I inquired from the authorized representative for the bank to advance his arguments on the points raised by the union in the shape of reply arriving the tribunal at a definite conclusion. I am afraid how the representative for the bank could not reply the legal argument that has been advanced by the Union.

36. As against it the consistent arguments of the banks representative was that the reference is not valid in the eye

of law, reference is not maintainable before this tribunal and is liable to be rejected and that the claim of the union is not an industrial dispute. I have given my consideration to the above arguments of the bank and I have come to the conclusion that these are merely mechanical and technical arguments in its very nature and if at all the bank was aggrieved by the present reference or on the point that the present claim is not an industrial dispute under the provisions of Industrial Disputes Act, 1947, it was open for the management to have challenged the same before some higher court but at any rate the bank cannot be allowed to raise hue and cry at this belated stage. I therefore, do not find any force or merit in the arguments advanced by the bank and thereby reject the same.

37. Sri D. P. Gupta, concerned workman has appeared as w.w.1 in the witness box and has stated on oath that in the Month of May 1996 cash credit limit in the account of M/s Anurag Udyog was enhanced to Rs.1.5 lac whereas the old cash credit limit in the said account was adjusted. He goes on to state that for enhanced limit he never stood guarantor. He has further deposed in his evidence after perusing paper No.3/16-17 which is the photocopy of bank's letter, filed by the union, which is admitted by the opposite party. After going through these papers he has deposed that he has never signed any document in the shape of S.1 *i.e.* letter of guarantee. He has further stated that the authorities of the bank did not take any sincere efforts to recover the loan from the original borrower and guarantor and allowed the loan to become time barred. He stated that he cannot be fastened any liability for repayment of the loan account. He has further stated that in case there is any dispute regarding guarantee of there must be a decree from the civil court.

38. The witness has further stated the fact that the bank has forged the document showing that Rs.5000/- on 27.09.2005 to the effect that the same is deposited by the workman himself, whereas the hard fact remains that the amount of Rs.5000/- was transferred from my salary into the sundry account and later on transferred to in cash credit limit account by falsely stating therein that the amount has been deposited by Sri D. P. Gupta.

39. In his cross examination, the witness after perusing paper No.3/7 stated that the limit was already enhanced on 01.05.96 and between 06.5.96 to 25.05.96 previous loan amount was adjusted and has further stated that according to Clayton rules the money deposited first would be deemed to have been deposited for adjustment for the first loan.

40. According to the statement of M.W.1, the witness has stated that the account of M/s Anurag Udyog was opened in October 1995 with a limit of Rs. 1 lac. In which the concerned workman and Sri Bal Krishna Gupta stood as a guarantor. Witness further goes on to state that on 03.06.96 limit was enhanced to Rs.1.5 lac in the account of M/s Anurag Udyog. During the examination in chief a

specific question was put by the representative for the bank from his witness on the point that according to the claimant the limit was adjusted in May 1996. The witness replied that on the basis of record no limit was adjusted. He goes on to state that till June 96 a total sum of Rs.99666.50 was outstanding.

41. Witness of the bank has clearly admitted in his cross examination that no guarantee bond or agreement duly signed by the workman has been filed on the record of the present case before the tribunal on behalf of the bank.

42. The witness of the bank during the course of his cross examination has specifically admitted that he has not gone through the averments of the written statement and is not able to state that any guarantee bond for enhanced limit duly signed by Shri D. P. Gupta was obtained or not and that is not filed on record. Regarding statement made by the bank in para 2 of their written statement the witness kept mum.

43. To a specific question put before the witness of the bank on behalf of the workman to the effect that whether the bank is competent to attach the salary of his workman or to deduct any amount from his salary. To this specific question the witness expressed his ignorance on the point by stating that he has never come across from any such legal provision under which the salary of an employee of the bank can be attached without the decree of competent court of law.

44. From a overall consideration of the facts and circumstances of the case coupled with the evidence of the parties, the tribunal is of the opinion that the action of the management of Union Bank of India in making deductions from the salary of Shri D.P. Gupta on account of loan limit enhanced by the management from Rs.1 lac to 1.5 lac without obtaining his signature as earlier limit of Rs.1.lac was already adjusted in year 1996 is neither justified nor legal. Moreover, in the given circumstances, the salary of the workman cannot be attached by the bank *suo motto* without adopting due process of law. Consequently, the workman is held entitled for recovery of the amount deducted from his salary on above grounds with pendentelte and future interest at the rate of 10% per annum.

45. Cost of the case at Rs.1000/- is also awarded to the workman.

46. Reference is therefore answered in favour of the Union and against the opposite party.

Dt. 15.04.2014

RAM PARKASH, Presiding Officer

नई दिल्ली, 10 अप्रैल, 2015

**का.आ. 771.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब नैशनल बैंक

के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कानपुर के पंचाट (संदर्भ सं० 47/99) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10.04.2015 को प्राप्त हुआ था।

[सं० एल-12012/213/98-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 10th April, 2015

**S.O. 771.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 47/99) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Kanpur as shown in the Annexure, in the industrial dispute between the management of Punjab National Bank and their workmen, received by the Central Government on 10/04/2015.

[No. L-12012/213/98-IR (B-II)]

RAVI KUMAR, Desk Officer

#### ANNEXURE

#### BEFORE SRI RAM PARKASH, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL- CUM-LABOUR COURT, KANPUR

#### Industrial Dispute No. 47 of 99

#### Between

Sri Vijai Shanker Savita,  
C/o Sri B P Saxena,  
426 W-11 Basant Vihar,  
Kanpur.

#### And

The Regional Manager,  
Punjab National Bank,  
Regional Office,  
Birhana Road,  
Kanpur.

#### AWARD

1. Central Govt, MoL, New Delhi *vide* notification No. L-12012/213/98-IR B-II dated 09.03.99, has referred the following dispute for adjudication to this tribunal—

2. Whether the action of the management of Punjab National Bank Kanpur, in terminating of Sh. Vijai Shanker Savita, from service with effect from 22.11.96 is justified? If not what relief the workman is entitled to?

3. It is common ground that the workman while working as cash peon at Banks Pandu Nagar Branch Kanpur was found to have pick pocketed an amount of Rs.150/- comprising of Rs. 50/- of three note from the bundle of Rs.50/- on 05.09.95 *vide* paper No.21/2. The workman has not replied the charges. Based on the enquiry he was

removed from the service of the bank vide order dated 05.02.97 passed by the disciplinary authority.

Appeal preferred by the applicant also stands dismissed vide order dated 09.07.98.

4. There is no dispute about the factual dispute as narrated hereinabove.

5. Now the case of the claimant is that the charge sheet has not been issued by the competent disciplinary authority; there was no evidence in support of the charge; that the entire enquiry has been conducted by the enquiry officer against the rules of natural justice, as such the dismissal order passed by the bank is liable to be set aside and the workman is liable to be reinstated in the service of the bank with full back wages and continuity of service and all consequential benefits.

6. The opposite party bank has filed their written statement wherein they have stated that the whole inquiry has been conducted in accordance with the rules of natural justice and the workman was given adequate opportunity for his defense. He was provided with all the documents during the course of departmental inquiry. The defense representative has never objected to the course of inquiry before the inquiry officer, therefore, the inquiry has been conducted in accordance with the rule of natural justice and having regard to the provisions of the Bipartite Settlement. Lastly it has been pleaded by the opposite party that the workman's claim is not maintainable and he is not entitled for any relief as claimed by him, therefore the claim is liable to be rejected.

7 Rejoinder has also been filed by the claimant but nothing new has been asserted by him.

8. Both the parties have filed documents.

9. Opposite party has filed all the original documents pertaining to inquiry including copy of charge sheet, inquiry proceeding register in original, inquiry officer report, show cause notice, final order of the disciplinary authority dated 05.02.97, dismissing the employee, order of the appellate authority etc. Photocopies of these documents have been filed by the workman also.

10. I have perused and considered the whole record and find that vide order dated 28.11.2001 a preliminary issue regarding the fairness of the inquiry was framed.

11. On the preliminary issue none parties have adduced any evidence.

12. I have heard the arguments in the case at length and considered the records of the case.

13. On the date of the arguments it has been conceded by the authorized representative for the workman that the enquiry held by the management was fair and proper.

14. I have also observed from the inquiry proceedings that fair and proper inquiry has been conducted by the inquiry officer. The star witness is Sri Shiv Kumar Verma who is eye witness and has seen the employee pick pocketing the three notes of Rs. 50/- from the bundle of Rs.100/-. These three notes having specific numbers which have been produced during the inquiry proceedings in the presence of witnesses that have been recovered from the pocket of the employee. The management witness Sri Verma has not been cross examined by the D.R. during the inquiry proceedings. Other witnesses from the side of the bank were also available who were examined and cross examined and nothing has come out from their mouth to disbelieve the allegations of the charges.

15. Therefore, after having anxious consideration to the whole inquiry conducted by the management it is concluded that the inquiry conducted by the management do not suffer from any infirmity and this fact has also been admitted by the representative of the workman.

16. Therefore the preliminary issue is decided in favour of the management.

17. The main argument of the representative for the management is that since there is no financial loss to the bank and considering the fact that the punishment is harsh having regard to the gravity of the charges, therefore, in exercise of powers conferred upon this tribunal under section 11-A of the Act, the punishment of dismissal from service may kindly be modified.

18. In the given facts and circumstances of the case the contention of the AR of the workman is not tenable in as such kind of matter like pocketing the public fund by an employee of reputed financial bank does not permit to reduce the sentence of dismissal that has been given by the disciplinary authority and confirmed by the appellate authority. Therefore, under the given circumstances of the case the tribunal is not of the opinion to give any sympathy to the workman in exercise of powers under section 11-A of the Act as the act of the workman is of grave nature and the punishment given to him by the disciplinary authority is just and fair.

19. Having concluded that the departmental inquiry conducted by the bank against the workman is just and fair and also having considered his case under section 11-A of Industrial Disputes Act, 1947, in the light of the gravity of misconduct proved against him, I am of the view that since the workman has pocketed three notes of Rs.50/- from a bundle of Rs.50/- while working as cash peon at Currency Chest of the bank and these notes were subsequently recovered from his pocket by manager of the branch, therefore, the misconduct committed by the workman is of very serious nature and under these circumstance of the case, the tribunal is not inclined to interfere with the punishment awarded by the disciplinary authority and upheld by the appellate authority.



20. As such on the basis of findings recorded above, the workman is not entitled for any relief pursuant to his claim statement and the reference decided against the workman and in favor of the management.

Dt. 1.01.2014

RAM PARKASH, Presiding Officer

नई दिल्ली, 10 अप्रैल, 2015

**का.आ. 772.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब एण्ड सिंध बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कानपुर के पंचाट (संदर्भ सं. 38/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10.04.2015 को प्राप्त हुआ था।

[सं एल-12012/121/2006-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 10th April, 2015

**S.O. 772.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 38/2007) of the Cent.Govt. Indus.Tribunal-cum-Labour Court, Kanpur as shown in the Annexure, in the industrial dispute between the management of Punjab & Sindh Bank and their workmen, received by the Central Government on 10/04/2015.

[No. L-12012/121/2006-IR (B-II)]

RAVI KUMAR, Desk Officer

#### ANNEXURE

#### BEFORE SRI RAM PARKASH, HJS, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, KANPUR.

#### Industrial Dispute No. 38 of 2007

Sri Pradeep Kumar Tiwari, son of Sri Ram Shanker Tiwari, resident of 236/6 Juhi, Lal Colony, Kanpur.

And

The Branch Manager,  
Punjab & Sindh Bank,  
Katariya Complex,  
Sarojini Nagar, Kanpur.

#### Award

1. Central Government, Mol, New Delhi, vide notification No. L-12012/121/2006-IR-B-II, dated 29.08.2007, has referred the following dispute for adjudication-

2. Whether the action of the management of Punjab & Sindh Bank Kanpur in terminating the services of

Sri Pradeep Kumar Tiwari, with effect from 20.07.05, without following the prescribed procedure under 25F of the Industrial Act, 1947, is legal and justified? If not to what relief the workman concerned is entitled to?

3. Brief facts are—

4. Claimant has a filed his claim statement making a prayer that the action of the opposite party in terminating his services w.e.f. 20.07.05 was not justified and he should be reinstated with all consequential benefits.

5. It is alleged that in search of employment the claimant approached the chief manager Punjab & Sindh Bank Gumti No. 5 Kanpur. The manager was kind enough to appoint him as temporary peon from 15.02.89. In proof of his employment a certificate issued by the bank is enclosed as annexure. 1. He was required to work for full hours of work. He was being paid Rs.25/- per day excluding Sunday's and holidays which was gradually raised to Rs. 50/-per day. He worked continuously at the branch of the bank in the year 1989 to 1995, when in Jan 95 he was called for interview at New Delhi. This interview was however cancelled. Later in June 95 he was again called for interview on 15.06.95, the applicant appeared for interview.

6. Letter for calling for interview is enclosed.

7. After the interview the applicant was continued to work as temporary peon and he continued to work in the year 95-99, when the applicant received a letter dated 21.07.99 from Zonal Office Lucknow, appointing the applicant a temporary peon at Katariya Complex Sarojini Nagar and he joined over there and he joined on 22.07.99. Upon joining the manager of the bank wrote a letter to the Zonal Office Lucknow of the bank inquiring about the emoluments to be paid to the workman. In reply Zonal office vide its letter dated 06.08.99 advised that the applicant be paid emoluments admissible to as fresh appointee, a copy is annexed as annexure IV. Again he was called for interview on 20.07.2000 by the Zonal Office and he again appeared for interview. It is stated by the claimant that at the Katariya Complex Branch he was being paid prescribed salary admissible to a regular peon of the bank. He was also required to sign the attendance register.

8. As such it is alleged that he worked continuously from 22.07.99 up till 19.07.05 at Katariya Complex Sarojini Nagar Branch when his services were abruptly and verbally terminated by the bank. At the time of dispensation of the services of the claimant the management has neither issued any notice, notice pay or retrenchment compensation nor have shown any reason for retrenching the services of the workman. The provision of the Act has been badly breached in the case of the workman therefore he is entitled for his reinstatement with full back wages and all consequential benefit.

9. The opposite party has filed reply against the statement of claim refuting all the allegations made by the

workman. it has been denied by the opposite party that the claimant was employed as a temporary peon by the Chief Manager of the bank on 15.12.89. He has no such power to appoint any person on any post. It has been stated that the alleged and so called services were purely on temporary basis on daily basis. It is also denied that at any point of time he was paid any salary by the opposite party. At no point of time the claimant completed 240 days continuously in one calendar year during the period of his casual employment.

10. It has been stated that it appears that there is a manipulation and malafide intention on the part of the claimant, who since inception have been trying to manufacture the documents for filing the false claim seeking his employment. The documents filed by the applicant are not admitted. Lastly it has been alleged that since the applicant has never been appointed in the bank therefore, provisions of I.D. Act are not applicable in his case and thereby he is not entitled for any relief pursuant to the present reference order.

11. Both the parties have adduced oral evidence. Claimant has adduced himself as w.w.1 Pradeep Kumar Tiwari, opposite party has adduced Sardar Amarjet Singh, M.W.1.

12. Claimant has produced several documents with the claim statement which are Annexure 1 to 8. He has also filed one carbon copy of letter dated 20.07.05.

13. I have examined the entire documentary as well as oral evidence led by the parties.

14. Claimant has claimed through his claim statement that he had been interviewed by the opposite party and after, interview he got an appointment letter for the post of temporary peon which is annexure 3. The opposite party, has challenged the authenticity and veracity of all these documents alleging that all these documents, have been manufactured with the purpose to file the claim.

15. I have given due thought to this appointment letter annexure 3. It is a photocopy and the signature of the Zonal Manager over it is not visible. This copy is addressed to the claimant himself. It shows that the original of this was given to the claimant. In such situation why, the original of this letter has not been filed by the claimant. He has not explained any reason for not filing the original of this letter.

16. Therefore, no reliance can be placed on this letter.

17. Similarly he has filed annexure 6 alleging to be the original. In this letter it has been written that Sri Pradeep Kumar Tiwari, is working at extension counter since 22.07.99. He is being paid the emoluments admissible to fresh peons as per bank's norms. Now a question arises that had the claimant been appointed as a temporary peon and he was being paid the prescribed salary for the temporary peon,

then it was very easy for the claimant to get the record summoned for his salary or wage being paid to him through the salary register or through the voucher. He summoned several other records but he did not summon the relevant and important records like the salary register or the vouchers which could have shown that he had actually been employed and paid his wages by the opposite party.

18. He has filed, several annexure either photocopies or someone in original like annexure 1 and annexure 6, when he could procure such documents from the custody of the opposite party he could have easily procured the copy of the salary register or the vouchers which could show that he was being paid exchequer of the opposite party.

19. He has moved an application for summoning such records for which the opposite party has alleged that these documents are not in their custody as these documents appears to be manufacture one for the purpose of filing the present claim.

20. It is alleged that he was terminated on 20.07.05, but the photocopy of the attendance register which is claimed to be of the opposite party shows that the same is of April 2000. There is no stamp of the opposite party on these documents. The claimant did not file the attendance relating to the period of July 2005, of before that.

21. I have examined the evidence of both the witnesses. In the cross examination claimant stated that when he joined on 22.07.99 as temporary peon he was not interviewed for this post. He also admitted that whenever he had worked he was being paid in his capacity as a casual worker.

22. Therefore considering all the facts and circumstances of the case, it is found that the claimant was never appointed against any regular or sanctioned post of peon as alleged by him.

23. He was engaged as a casual worker as alleged by, the opposite party and he was being paid as a casual labor. There is no such evidence that the claimant has completed more than 240 days within 12 months preceding the date of his termination, which is 20.07.05. As the initial burden lies on the claimant to prove his case that he had actually worked for more than 240 days preceding 12 calendar, months from the date of his termination, but since the claimant has failed to discharge his obligation in the present case, therefore, this tribunal is of the opinion that the claimant has failed to discharged his primary obligation to prove his case.

24. Consequently reference is answered against the claimant and in favor of the opposite party holding that the claimant is not entitled for any relief as claimed by him.

25. Reference is answered accordingly.

Date : 21.01.2014

RAM PARKASH, Presiding Officer

नई दिल्ली, 10 अप्रैल, 2015

**का.आ. 773.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इंडियन बैंक के प्रबंध तंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय चैन्नई के पंचाट (संदर्भ सं. 67/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10.04.2015 को प्राप्त हुआ था।

[सं एल-12011/25/2013-आईआर (बी-II)]  
रवि कुमार, डेस्क अधिकारी

New Delhi, the 10th April, 2015

**S.O. 773.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 67/2013) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the industrial dispute between the management of Indian Bank and their workmen, received by the Central Government on 10/04/2015.

[No. L-12011/25/2013-IR(B-II)]  
RAVI KUMAR, Desk Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL- CUM- LABOUR COURT, CHENNAI

Wednesday, the 25th March, 2015

**Present :** K.P. PRASANNA KUMARI,  
Presiding Officer

#### Industrial Dispute No. 67/2013

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of Indian Bank and their workman)

#### BETWEEN

The General Secretary : 1st Party/  
Indian Bank Employees' Petitioner Union  
Association (Tamil Nadu)  
17, Ameerjan Street  
Choolaimedu  
Chennai-600094

#### AND

The Asstt. General Manager (HRM) : 2nd Party/  
Indian Bank, Corporate Office, Respondent  
HO HRM Department  
254-260, Avvai Shanmugham Salai,  
Royapettah, Chennai-600014

#### Appearance:

For the 1st Party/Petitioner : Sri K. Krishnan,  
Union Authorized  
Representative  
For the 2nd Party/ : M/s T.S. Gopalan & Co.,  
Respondent Advocates

#### AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-12011/25/2013-IR(B.II) dated 23.05.2013 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

*"Whether the action of the Indian Bank management in respect of introducing Sorting Machine at Currency Chest without adequate manpower is justified or not? To what relief the workmen are entitled?"*

2. On receipt of Industrial Dispute this Tribunal has numbered it as ID 67/2013 and issued notices to both sides. Both sides have entered appearance through their counsel and have filed their claim and counter statement respectively.

3. The averments in the Claim Statement filed by the petitioner in brief are these:

The petitioner is a Union registered under the Trade Union Act. It has substantial following among workmen in the Respondent Bank. Initially there were no currency counting and sorting machines for the Respondent Bank. These works were performed manually by the Clerical Staff attached to Currency Chest. When note counting machines were introduced in Currency Chest the quantum of work to be performed was fixed bilaterally between the Management and recognized union on 01.03.2002. Now this settlement is in vogue. An Office Order was issued to the staff attached to Currency Chest in Coimbatore Main Branch on 23.11.2010 arbitrarily fixing the quantum of notes to be counted as 90 bundles per sorting machine. A team of three persons are allotted to each machine. This was done without any scientific study and without any bilateral arrangement fixing the quantum. When the members of the Petitioner Union expressed reservation regarding the order they were transferred to different places. In the absence of a bilateral settlement the quantum fixed by the Management should not be implemented. The staff at the Currency Chest attached to Coimbatore could count and sort only 54 to 60 bundles a day even on sitting late for 20 minutes. The Management should determine the staff strength of the Currency Chest keeping into account the volume of cash handled and the number of branches serviced by a particular Currency Chest. It should also have alternate arrangement for making leave vacancies on day to day basis. There is no justification for the quantum unilaterally

fixed by the Management. Direction may be issued to the Management to arrive at a new bilateral settlement on the issue and they should be asked to withdraw unilateral action of the Management of Currency Chest, Coimbatore Main Branch.

4. The Respondent has filed Counter Statement contending as below:

The issue involved in the dispute was raised after an alternative sorting machine with more number of stackers for holding currencies was introduced in the Currency Chest attached to the Coimbatore Main Branch in 2010. As a statutory obligation the Respondent is required to maintain cash reserve ratio requirements at the Currency Chest. The Currency Chest of the Respondent is controlled by the Reserve Bank of India and the Respondent has to carry out the directions issued by the RBI from time to time. The remittances made to the Currency Chest are to be sorted out as soiled, re-issuable and fake or rejected notes. Loose currencies have to be made into sections of 100 pieces and 10 sections make out one bundle. Remittances to RBI should be made only in bundles. Before remittances made to the Currency Chest is acknowledged it will have to be sorted out. At one stage both the counting and sorting of notes were done manually. Later counting machines were introduced. Only in 2005 automatic counting-cum-sorting and fake detection machine came to be used. The capacity of the machine according to the manufacturer is 720 currencies per minute and this will come to 250 bundles during the office period of 6 hours. There are two types of machine, one with 4 stackers and another with 8 stackers. The Currency Chest at Coimbatore being one that receives maximum inward flow of currencies the Currency Chest attached to Coimbatore Main Branch has been given sorting machine with 8 stackers. In Coimbatore Main Branch with 8 staff and 8 stacker sorting machine 300 bundles were to be made on a full working day. A representation was made against the quantum fixed and accordingly on 19.11.2010 an exercise was conducted by the staff of the Currency Chest in the presence of Officers and Others and it was agreed that 90 bundles per machine per day irrespective of the denomination is achievable. This was recorded and seven staff of the Currency Chest had affixed their signatures showing that such an exercise was carried out. Six Clerical Staffs used to be posted by rotation by the Currency Chest. Even though the staff at the Coimbatore Currency Chest agreed to sort out 90 bundles per machine they refused to give this output. Sorting machines which are functioning in other branches are giving. Output of 90 bundles per day. It is for the Management to decide the manpower requirement for operating currency sorting machines. The demand of the Petitioner Union is totally unjustified. It is incorrect to state that the members of the Petitioner Union were transferred to far off places when they refused to work as per the norms of 90 bundles per sorting machine. The present issue is raised only to show

protest against the transfer which has been done as per the transfer policy. The petitioner is not entitled to any relief.

5. The averments in the case consists of oral evidence of WW1 and documents marked as Ext.W1 to Ext.W5 and Ext.M1 to Ext.M10.

#### 6. The points for consideration are:

- (i) Whether the Management is justified in fixing the quantum of output for the sorting machine unilaterally as alleged?
- (ii) What is the relief to which the petitioner is entitled?

#### The Points

7. The controversy has arisen consequent to the introduction of a new Currency Sorting Machine in Coimbatore Main Branch of the Respondent Bank to which there is a Currency Chest attached. An Office Order has been issued by the Respondent specifying that each sorting machine should sort and count 90 bundles of currency on a full working day. The petitioner is alleging that this is a unilateral decision on the part of the Respondent and the quantum of work to be carried out by the machine has been fixed without making an assessment of the capacity of the machine in a scientific manner. According to the petitioner it is impossible for a machine to sort 90 bundles of currencies on a day even if three employees are allotted for a machine. The petitioner has stated in the Claim Statement that in order to comply with the order of the Management to sort 90 bundles of notes on a day the staff had been forced to sit in the office beyond the office hours.

8. Ex.W4 the Memorandum of Settlement entered into on 01.03.2002 shows that it was on the basis of an agreement between the Management and the workmen the capacity of a worker to sort and count currency notes manually has been fixed. It was only subsequently machines were introduced to ease the work. Initially it was only counting machine. Sorting had to be done manually even then. Later more sophisticated machine with capacity for counting, sorting and detecting soiled, re-issuable and fake notes were introduced. Two types of machines seems to have been brought into operation, four stacker as well as eight stacker. As could be seen from the Counter Statement two 8 stacker machines were put into operation at the Currency Chest attached to Coimbatore Main Branch.

9. The case of the Respondent is that the new machines have got very high capacity as claimed by the manufacturers of the machines and the quantum of output fixed by the Bank for each machine is much lower than the actual capacity of the machine. According to the Respondent there was no question of the machines failing to bring out the output as fixed by the Respondent with three employees working on each machine. One employee has to feed the



currencies to the machine, one is to pick up the currency from the stacker and third one is to put the paper flap on the Section.

10. The Respondent has produced Ext.M3-the catalogue of the machine put into use at the Currency Chest. The catalogue contains the photograph of the two types of machine, the four stacker as well as the eight stacker. As far as ,the eight stacker is concerned the manufacturer claims that the counting speed of the machine is approximately 720 notes per minute. It is on the basis of this it is claimed by the Respondent that the machine can in fact carry out more work than the quantum that is fixed at the Coimbatore Currency Chest. As could be seen from the Counter Statement itself initially the quantum fixed for the 8 stacker machine was 150 bundles per day with three staff to do the work. The order to this effect was issued on 10.11.2010. However this seems to have been objected to by the Staff. It is the case of the Respondent that in view of the objection an exercise was carried out on 19.11.2010 by the Staff of the Currency Chest in the presence of Assistant General Manager, Chest Officer, Chief Manager and others. WW1 has stated that he has knowledge that a representative of the manufacturer of the machine was brought to the chest for demonstration. He has further stated that he was aware of Ext.M5 order. Ext.M5 states that an exercise was conducted on 19.11.2010 by the Circle Office, Coimbatore and the quantum of at least 90 bundles per machine per day irrespective of the denomination has been agreed upon. The staff are instructed to complete the sorting of at least 90 bundles per day per machine with three persons for each machine. At the bottom of this order there are the signatures of Chest Officer, Chief Manager, Assistant General Manager and 7 others purported to be members of the staff.

11. It could be seen from the manner in which the Respondent has fixed the quantum of currencies to be sorted by the machine that the claim of the manufacturer regarding the capacity of the machine was not accepted by the Respondent itself. The claim of the manufacturer is that 720 notes could be counted within a minute. The quantum fixed earlier was 150 bundles per day. This was later brought down to 90 bundles on objection by the staff. Of course, a demonstration seems to have been conducted in the presence of some staff members. But the representatives of the workmen were not there. As referred to earlier, the quantum of sorting to be done manually was fixed by the Management and the workmen together and an agreement was entered into. But when the machines were introduced the Respondent seems to have forgotten to take the workmen into confidence before fixing the quantum. It is only proper that a demonstration which is acceptable to the Management as well as the workmen is carried out before fixing the quantum of work to be done by each machine. The Respondent can take into confidence the representatives of the Unions for this purpose. A

demonstration should be carried out by the manufacturer in the presence of the Management and the representatives of the recognized unions and also representative of the petitioner. The quantum of work to be carried out by the machine should be fixed on the basis of the result of the demonstration.

Accordingly, the Respondent is directed to fix the quantum of work for each machine based on demonstration to be carried out by the manufacturer in the presence of the representatives of the Respondent, the petitioner and other recognized unions, within a month.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 25th March, 2015)

K. P. PRASANNAKUMARI, Presiding Officer

#### Witnesses Examined:

For the 1st Party/Petitioner : WW 1, Sri, C.  
Union : Sethuramachandran  
For the 2nd Party/Management : None

#### Documents Marked On the petitioner's side

Ex.No.	Date	Description
Ex.W1	16.12.2010	Notice of strike issued by Petitioner Union against the unilateral workload increase in Currency Chest, Indian Bank, Coimbatore
Ex.W2	21.02.2011	Letter by HO:HRM Deptt. Indian Bank, Chennai as reply to ALC, Chennai letter dated 05.01.2011
Ex.W3	07.03.2011	Letter I BEA/GEN/53/2010-13 as reply to the above letter by HO:HRM Deptt., Indian Bank
Ex.W4	01.03.2002	Memorandum of Settlement between Indian Bank Management and the recognized federation regarding sorting of notices in Currency Chests in Indian Bank
Ex.W5	09.11.2010	Letter I BEA/GEN/36/2010-13 by Petitioner Union to Indian Bank, HO:HRM Deptt. Seeking review of norms for sorting of notes in Currency Chests

#### On the Management's side

Ex.No.	Date	Description
Ex.M1	—	Indian Bank work flow at currency chest consequent to provision of sorting machine

Ex.M2	—	Extract — manual cash handling and Management 2005
Ex.M3	—	Currency Sorter — catalog manufactured by Glory Ltd. U-600 with 8 Stackers 2 Reject Stackers and UW-500 with 4 Stackers and 2 Reject Stackers
Ex.M4	10.11.2010	Office Order No. 20 signed "Chest Officer" "Chief Manager" Asstt. General Manager and signed and acknowledgement by 6 staff — work norms
Ex.M5	23.11.2010	Office Order No. 21 — Proceeding of exercise conducted on 19.11.2010 signed by Chest Officer "Chief Manager; and Asstt. General Manager — signed and acknowledged by 7 staff
Ex. M6	—	Attendance Register for month of 22-30 November 2010
Ex.M7	10.05.2013	Reserve Bank of India! CEO of all banks on clean note policy — enclosing 07.11.2001 letter from RBI to all Commercial Banks
Ex.M8	—	Currency Chest on chest balance limit (CBL) Extract of Page 4.17 (Clause-9) Page 4.20, 4.25, 4.26, 4.27, 4.28, 4.29, 4.30, 4.31, 4.36, 4.37, 4.38, 4.39, 4.40 clauses 13.01.4 to 22.5
Ex.M9	—	Statement — Clericals — Transfer Order under periodical — centre seniority
Ex.M10	—	Conciliation Failure Report Page -1 only

नई दिल्ली, 10 अप्रैल, 2015

**का.आ. 774.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पोस्ट मास्टर जनरल एवं आथर्स, चेन्नई के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय चेन्नई के पंचाट (संदर्भ सं० 63/2014) की प्रकाशित करती है, जो केन्द्रीय सरकार को 09.04.2015 को प्राप्त हुआ था।

[सं० एल-42025/03/2015-आईआर (डीयू)]  
पी० के० वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 10th April, 2015

**S.O. 774.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D No.63/2014) of the Central Government Industrial Tribunal Cum Labour Court, Chennai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Post Master General & others, Chennai and their workman, which was received by the Central Government on 09/04/2015.

[No. L-42025/03/2015-IR (DU)]  
P. K. VENUGOPAL, Desk Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Tuesday, the 31st March, 2015

**Present :** K. P. PRASANNA KUMARI,  
Presiding Officer

#### Industrial Dispute No. 63/2014

(In the matter of the dispute for adjudication under Sub-Section 2A of Section-10 of the Industrial Disputes Act, 1947 (as amended by Act-24 of 2010 *w.e.f.* 15.09.2010). between the Management of Post Master General and Two Others and their workman)

#### BETWEEN

Sri M. Pandiyan : 1st Party/Petitioner

#### AND

1. The Post Master General : 2nd Party/1st  
Chennai City region Respondent  
Chennai-600002
2. The Director of Postal : 2nd Party/2nd  
Services Chennai City Respondent  
Region Chennai-600002
3. The Superintendent : 2nd Party/3rd  
of Post Offices Respondent  
Vellore Division  
Vellore -632001

#### Appearance:

For the 1st Party/Petitioner : M/s Balan Haridas,  
Advocates

For the 2nd Party/Respondents : Sri M. Liagatali,  
A.S.GC.

### AWARD

This is an Industrial Dispute taken on file under 2(A)(2)(1) of the Industrial Disputes Act, 1947 (as amended by Act-24 of 2010 *w.e.f.* 15.09.2010).

1. The averments in the Claim Statement filed by the petitioner in brief are these:

The petitioner joined the service of the Respondent as Extra-Departmental Branch Post Master at Marudavallipalayam Branch Post Office coming under Virinjipuram Sub-Post Office, Vellore Post Division on 25.05.1994. The petitioner had been discharging his duties without room for any complaint. While so the petitioner was put off from duty *w.e.f.* 04.07.2002. A Charge Memo dated 19.03.2003 was issued to the petitioner by the Third Respondent. In the Charge Memo three charges were leveled against the petitioner. The First Charge is that he had mis-utilized funds to the tune of Rs. 1100/- in the RD Account of Smt. Thangammal. The Second Charge related to mis-utilizing a sum of Rs. 7,500/- from the SB A/c of one Rajammal. The Third Charge is that certain transactions in the account of one Nagaraj were not brought on record. The petitioner was put off from duty from 04.07.2002 to 31.10.2011, the date on which he was removed from service. A criminal proceeding had been launched against the petitioner in respect of the allegation for which disciplinary proceedings were initiated. The criminal proceedings was tried as CC 31/2003 by the Judicial Magistrate No. 4, Vellore and the petitioner was acquitted of the charges by judgment dated 10.08.2007. The Respondent commenced the departmental enquiry against the petitioner in respect of Charge Memo dated 19.03.2003 after conclusion of the criminal proceedings. In the enquiry, the department dropped the third Charge. On analyzing the entire materials placed before him the Enquiry Officer held that Charges 1 and 2 are not proved and that the Third Charge has been treated as dropped by the department. Alongwith the report of the Enquiry Officer forwarded to the petitioner by the Third Respondent there was a disagreement note in respect of Charges 1 and 2 and the petitioner had been asked to give his comments on the disagreement. The petitioner had submitted his comments stating that disagreement has been arrived at on the basis of presumption and assumption. However, without considering the objection raised by the petitioner the Third Respondent imposed the punishment of removal from service on the petitioner by order dated

30.10.2011. The appeal preferred by the petitioner to the Third Respondent was rejected. The petitioner has raised Industrial Dispute thereafter. The conciliation proceedings ended in failure and a report was submitted to the Government to this effect. However, the Govt. of India declined to refer the dispute to the Industrial Tribunal. The petitioner has made the claim here consequently. None of the charges against the petitioner are proved in the enquiry proceedings. There is no justification for the order removing the petitioner from service. An order may be passed setting aside the order of the Third Respondent removing the petitioner from service and directing the Respondents to reinstate the petitioner with back wages, continuity of service and other attendant benefits.

2 The Respondents have filed Counter Statement contending as below:

The petitioner who was working as Branch Post Master at Marudavallipalayam has committed misappropriation of a total amount of Rs. 66,697/-. He was proceeded under Rule-10 of GDS (C&E) Rules, 2001 and on finalization of the case he was awarded the penalty of removal from service. The claim of the petitioner that he has been discharging his duties without any complaint is denied. The fraud committed by the petitioner was detected on 22.06.2002 while the Assistant Superintendent of Post Offices, Vellore East Division was carrying out verification of the Pass Books. Further enquiries and investigations revealed that he had committed misappropriation of a total amount of Rs. 66,697/-. Disciplinary action was initiated against the petitioner after he was placed under put off duty on 04.07.2002. While on duty the petitioner had accepted a total sum of Rs. 1,100/- on different dates from Thangammal, an RD Account Holder and he has utilized the said amount for his personal use and has failed to issue counterfoils of pay-in-slip to the depositor. He has accepted Rs. 7,200/- on different dates from Rajammal for depositing them in her account and failed to account for them under SB Deposits in the journal of the Post Office or in the account of the office on the day of acceptance or on subsequent dates and utilized the amount for the medical expenses of his daughter. He failed to issue counterfoils of the pay-in-slips to the depositor and instead obtained thumb impression of the depositor on a white paper on three dates for the deposits and failed to maintain integrity and devotion to duty. The petitioner also accepted a total of Rs. 580/- from SB Account Holder, Nagarajan by five different dates but did not bring the transactions under the SB Account Journal and utilized the amount for his personal use. The

transactions which are the subject matter of the criminal case are different from those in the departmental proceedings. Since the disciplinary authority observed that evidence adduced in the enquiry proceedings is satisfactory, he has disagreed with the findings of the Enquiry Officer with reference to Charges 1 and 2 and this was communicated to the petitioner for his comments. After considering the comments of the petitioner, the Disciplinary Authority had taken the decision to impose the penalty of removal from service on the petitioner. The appeal submitted by the petitioner against this order has been dismissed. The case against the petitioner was satisfactorily established in the domestic enquiry. The disciplinary authority has ordered removal of the petitioner from service based on sufficient material. The petitioner is not entitled to any relief. The claim is liable to be dismissed.

3. The petitioner has filed rejoinder denying the allegations made in the Counter Statement and reiterating his case in the Claim Statement.

4. The evidence in the case consists of documents marked as Ext.W1 to Ext.W59. No oral evidence was adduced on either side. No documents were marked on the side of the Respondent also.

**5. The points for consideration are:**

- (i) Whether the action of the Third Respondent in removing the petitioner from service is justified?
- (ii) What if any is the relief to which the petitioner is entitled?

**The Points**

6. The petitioner who was working as Extra Departmental Branch Post Master now re-designated as Gramin Dak Sevak Branch Post Master. The petitioner is alleged to have committed misappropriation of amounts from the accounts of three different account holders. He was removed from service on the basis of the departmental enquiry conducted against him. Within the date of issue of charge sheet and the date of removal from service of the petitioner there was a gap of 9 years, 3 months and 27 days. He was put off from duty on 04.07.2002 and he was removed from service on 31.10.2011 based on the charge memo issued on 19.03.2003. In the meanwhile the criminal case that was initiated against him was tried before the Judicial Magistrate, Vellore and had ended in acquittal. Ext.W20 is the copy of the judgment which is in Tamil. It is claimed by the petitioner that the subject matter of the criminal case is the matter regarding which charge memo had been issued and domestic enquiry had been conducted. It is stated on behalf of the Respondent that

those are totally different transactions. However, both sides have not cared to place a translated version of the judgment before this Tribunal. In any case even assuming that the criminal case and the departmental enquiry are in respect of the same transactions, acquittal of the criminal case need not absolve the petitioner from the charges in the domestic proceedings. Only on the basis of the material available in the domestic enquiry it is to be decided whether the petitioner has committed the misconducts alleged against him by the Charge Memo dated 19.03.2003.

7. The Third Charge against the petitioner has been dropped by the Enquiry Officer as the Presenting Officer himself dropped it. It is seen from the order of the Disciplinary Authority marked as Ext.W14 that in the absence of the depositor having been examined in the enquiry proceedings and in the absence of identification of the concerned Pass Book the article of charge was dropped by him also. So there is no necessity to consider the third charge against the petitioner in this ID.

8. The First and Second Charge against the petitioner as found in the Charge Memo issued to the petitioner runs like this:

**ARTICLE-I**

That Sri M. Pandian while working at BPM, Marudavallipalayam BO a/w Virinjipuram SO 632104 accepted the following amounts on the date noted against each from Smt. Thangammal, W/o Late Vajiram for depositing them in her RD Account No. VRM 10691303 but did not bring them under RD Deposits in BO RD Journal of M.V. Palayam BO or in the account of the office on the date of acceptance or on subsequent date contravening the provisions of Rule-I and Rule 31(2) (iv) 106 of Section I & II of SB Manual Volume I and Rule 124 and Rule 133(2) of Rules for BOs and utilized the said amount of Rs. 1,100/- for his personal use and also failed to grant counterfoils of pay-in-slip to the depositor.

Date of Deposit	Amount in Rs.	Date of Deposit	Amount
09.07.2002	100.00	24.11.2002	100.00
17.07.2002	200.00	28.12.2002	100.00
24.08.2002	100.00	28.01.2003	100.00
25.09.2002	100.00	14.03.2003	100.00
22.10.2002	100.00	29.04.2003	100.00

Thus he failed to maintain absolute integrity and devotion to duty as required of him under Rule-21 of Gramin Dak Sevaks (Conduct and Employment) Rules, 2001



**ARTICLE-II**

That Sri M. Pandian, while working as BPM, Marudavallipalayam BO a/w Virinjipuram SO 632104 on 23.02.2000, 01.03.2000, 01.00.2000, 21.07.2001, 25.08.2001 and 12.02.2002 had accepted a sum of Rs. 1,500/-, Rs. 1,000/-, Rs. 500/-, Rs. 100/-, Rs. 100/-, Rs. 4,000/-, respectively from Smt. Rajammal, W/o Late Kullan Gounder, depositor of SB account no. VRM 1742601 for depositing them in the said account and failed to account for them under SB deposits in BO SB Journal of Marudavallipalayam BO or in account of the office on the date of acceptance or on subsequent date contravening the provisions of Rule-1 and Rule-31(2)(iv) of Section-I of SB Manual, Volume-I and Rule 124 and 133(2) of Rules for BOs (Seventh Edition) and utilized the entire amount of Rs. 7,200/- for the medical expenses of his daughter and also failed to grant counterfoil of the pay-in-slips to the depositor instead he obtained the thumb impression of the depositor in a white paper on three dates for the above said deposits and thus failed to maintain absolute integrity and devotion to duty as required of him under Rule-21 of Gramin Dak Sevaks (Conduct and Employment) Rules, 2001.

9. It is to be seen whether the above two charges are proved through the material placed before the Enquiry Officer by way of oral and documentary evidence. The concerned account holder, Thangammal has been examined before the Enquiry Officer as SW1. The statement dated 26.06.2002 purportedly given by Thangammal to ASP Vellore, East Sub-Division has been marked as a document during the chief-examination of this witness. She was asked if the fingerprint in the statement belongs to her and she has answered that since her name is found written below the fingerprint it must be her fingerprint. She has stated that she used to pay Rs. 100/- monthly in the RD Account that was opened by her at Marudavallipalayam Post Office. After this a Pass Book was shown to her and she has stated that if her name is there in the Pass Book it must be her Pass Book. The witness has stated during her cross-examination that she is illiterate. Yet the purport of the statement said to have been given by her was not put to her before the document was marked. The witness has stated that she has given her statement to a person having some impairment in hand. Then she has stated that there was a person with bald head also alongwith the other one. She then categorically stated that she does not know anything about the contents of the statement which is marked as Ext.SE1. She had then stated in answer to the question whether she had dictated the contents of Ext.SE1 that it was written by the scribe of the document himself. She stated that she has put her thumb impression in the statement without knowing the contents of the same. She then stated that she had received the entire amount that she had deposited in the Marudavallipalayam Post Office.

Regarding the Pass Book marked as SE-2, she had stated that she does not know whether it belongs to her but it must be if her name is there. During cross-examination a revised SB Card in the name of the witness was put to her to bring out that there was difference in the finger impressions in the two documents. On one occasion she has stated that the statement was read out to her after it was recorded. Again she shifted her stand and stated that she was asked to affix her finger impression and she has affixed the same. According to her, the statement was obtained from a spot near her house.

10. SW2 is examined to prove that it was in his presence the statement of Thangammal, SW1 was recorded. He has stated that he has signed as a witness to the statement. However, according to him while he was going home, a man has asked him to sign as witness for his visiting the village and accordingly he has signed. He did not make any enquiry as to why he was made to put his signature. According to him, Thangammal the alleged giver of the statement was not in the vicinity at all when he put his signature. The statement was not written in his presence also. He does not know who has written the statement. According to him, there was no one alongwith the person who made his sign as witness to the statement. He had put his signature without knowing the reason or knowing anything about the circumstances under which the statement was recorded

11. SW5 is the one who has purportedly recorded SE1 statement. The version of SW1 that she was made to sign a statement by a person having some impairment in hand was brought to the notice of SW5 to bring in that he is not the one having any impairment in hand. This witness has stated that the petitioner was also was there when the statement was obtained but this is not spoken to by SW1 or SW2. When it was put to this witness that the petitioner was on duty on the date on which the statement was allegedly recorded, he has stated that he does not remember if the petitioner was there. It was also brought out from this witness that when cent percent verification of the records were done he was also there and his colleague had recorded "satisfactory" in many of the documents. These documents were marked through this witness also.

12. What is the evidence regarding Charge No. 2 which is in respect of Rajammal examined as SW3? The charge is that the petitioner had received different amount on different dates from Rajammal for deposit in her SB Account but he failed to account for them under SB Deposits in the SB Journal or in the accounts of the office and utilized the amounts which comes to a total of Rs. 7,200/- for his own personal purpose. A Pass Book was shown to SW3-Rajammal and she had admitted it to be her Pass Book and it was marked. Then a statement was put to the witness

and she had stated that it contained her finger impression and this was also marked. However, during cross-examination it was revealed that she knew nothing about the details of the statement purportedly containing her finger impression. She does not know who recorded the statement. She stated that it was not recorded in her presence at all. She does not know who else were there when she had put her thumb impression in the statement. She remembered that she had affixed thumb impression from Marudavallipalayam Post Office. She stated that she would not be able to identify the person who wrote the statement. She does not know who asked to put her thumb impression in the statement.

13. One Suguna examined as SW4 has purportedly signed as witness to the statement said to be containing the finger impression of Rajammal. She stated that a person from the Post Office told her to sign and thus she has put signature. The person never told her for what purpose she was made to put her signature. She does not know who wrote the statement. The statement was not written in her presence at all. The finger impression in the statement said to be that of Rajammal was not put in her presence. She does not know of whose finger impression is there in the statement. Rajammal was not there at all when she signed the statement. She does not know anything about the contents of the statement. It was not read over to all at all. She stated that since somebody from Post Office had asked her she has put her signature.

14. SW6 had worked as Mail Overseer in Vellore (West) Sub-Division. According to him under the orders of ASP Vellore (East) SD he had accompanied the ASP to Marudavallipalayam Post Office for verification. According to him, it was at that time on 16.08.2002 the statement of Rajammal was recorded. He stated that he is the person who recorded the statement of Rajammal. When he was asked if he had written the details on his own accord he stated that he wrote the same since the depositor is illiterate. He did not say that it was as dictated by Rajammal or even as per the details given by Rajammal he has recorded the same. According to her, he wrote the statement himself and read it over to Rajammal and obtained her finger impression. It was brought to the notice of this witness that Rajammal had deposed that she does not know anything about the details in the statement and that the statement was written by him on his own accord. He agreed with this. He has then stated that it was not written in the presence of Rajammal at all. According to him the statement was recorded from a place near the Branch Post Office. When it was put to the witness that Rajammal had given evidence that the statement was not read over to her he agreed with that also. He does not know who all were there when the statement was recorded. Even though SW4 Suguna stated that she has signed as a witness to the statement of Rajammal though not in the presence of Rajammal and

unaware of the contents, according to SW6 he has not taken the signature of Suguna at all in the statement of Rajammal as a witness. He had only written the statement, obtained the finger impression of Rajammal and handed it over to ASP. There was no signature of Suguna in the statement when he handed it over to ASP. He has stated that the petitioner was not there when the statement was recorded.

15. The above is the oral evidence available in respect of the two charges. Even a reading of the evidence would show that the version of the witnesses are contradictory to each other. Both account holders concerned are illiterate and their statements were recorded by somebody else but there is not even a case for those who recorded the statements that the details for the statement were given by the concerned account holders and the statements were written on the basis of this. The concerned statement givers do not know anything about the statements. They were not able to give any details regarding the statements at the time of evidence. The Presenting Officer did not make any attempt to elicit from them any details regarding the charges also.

16. Apart from the inherent lacunae in the oral evidence regarding the statements which is very basis of the charges, it has been pointed out by the counsel for the petitioner that since the statements were not read over to the alleged statement givers also those could not be accepted. This was one reason given by the Enquiry Officer to enter a finding that Charges 1 and 2 are not proved. The Disciplinary Authority also was aware of the rule that the statement should have been read over to the witness. In his disagreement note marked as Ext.W12 he has referred to Govt. of India Decision No. 23 to Rule 14 of CCS, CCA Rules where it is mentioned that instead of recording the evidence of prosecution witnesses *denovo*, wherever it is possible the statement of witnesses already recorded during preliminary investigation may be read over to the witness at the oral enquiry. On going through the evidence of Thangammal and Rajammal it could be seen that during the enquiry proceedings the statements were not read over to them at all. In fact if they had been read over, these illiterate witnesses would not have been put in such a helpless position. During cross-examination on behalf of the petitioner, the Disciplinary Authority has merely stated in his disagreement note that the witnesses have stated that the statements contained their thumb impression. When they do not know anything about the details of the statements it is impossible that they would have been able to identify the thumb impression. It would not have been possible even for an illiterate person to identify finger impression. What the witnesses have stated is that they were made to put their thumb impression to some or other statement about which they do not know anything. This is not compliance of the decision to Rule-14 referred to earlier.

17. The counsel for the Respondent has submitted notes of argument to justify the case. However, except referring to the disagreement note of the Disciplinary Authority to be considered as part of the argument he has not given any aspect which justifies the case of the Respondent. He has been submitting during his argument that the documents which are before the Tribunal would show that the case of the Management is sufficiently established.

18. The documents referred to by the counsel for the Respondent could now be examined. The documents were marked in the enquiry proceedings through SW7 who had retired as Superintendent of Post Offices and had worked as Assistant Superintendent of Post Offices in Vellore (East) Sub-Division during the concerned period. The SB Journals and BO Accounts of the relevant period were marked through this witness. These are intended to show that though amounts that were given by Thangammal and Rajammal, the details of which are shown in the charge were entered in the concerned Pass Books, the payments are not reflected in the SB Journal or BO Account. Certainly, a perusal of the journals and account would show that though entries of receipt of amounts are there in the Pass Books which are marked through Thangammal and Rajammal, there are no corresponding entries in the journals and the Branch Office Accounts. However, it would not be possible to decipher misconduct on the part of the petitioner from this also. It is stated in the statement of imputations of misconduct in support of Articles of Charge that when ASP, Vellore East Sub-Division was campaigning at Annachipalayam Village served by Marudavallipalayam BO on 22.06.2002 he had collected some of the Pass Books for verification and had noticed certain signs of having removed the middle pages of the Pass Books of Thangammal and Rajammal and replaced by other pages and having thoroughly checked the table drawer of Marudavallipalayam BO he had found original sheets with deposit entries of the Pass Books of Thangammal and Rajammal. Thus it could be seen that this is the foundation for the charge itself. However, nothing was stated in the evidence during the enquiry proceedings regarding the removal of original sheets from the Pass Books or replacement of the sheets. Though, SW7 is the one who worked as Assistant Superintendent of Post Offices, one does not know if he is the one who detected the removal and replacement. He has not stated anything about this during his evidence. He has merely referred to the journals and the accounts. The statement of Thangammal and Rajammal were put to this witness and he has stated that he does not know who were present when the statements were recorded. No other question was put to the witness regarding the recording of the statements. One does not know whether the copies of Pass Books that were marked through Thangammal and Rajammal are the original ones or those in which sheets were replaced. In any case what happened to the other sheets? There is no evidence

regarding all these. Thangammal and Rajammal have merely stated that if their names are there in the Pass Books those must belong to them. They, as could be expected, are not in a position to state anything about the contents of the Pass Books or about the malpractices carried out in the Pass Books. It was for the officials who detected the malpractice to give evidence regarding that. Though there is reference to it in the statement of imputations of misconduct, they have kept silence regarding the same during their evidence.

19. It is further stated in the statement of imputations that the petitioner has admitted his guilt and has given statement to this effect. The Management has tried to mark the statements through SW7, the same witness through whom journals and BO accounts were marked. The witness had stated that he had obtained the statements from the petitioner. However, there was stiff opposition from the petitioner's side to mark the documents and the Enquiry Officer seems to have accepted the objection and refused to mark the statements. There was no further attempt on the part of the Management to prove these vital documents.

20. It has been brought out on cross-examination of SW7 that SW5 Munuswamy and Vijayakumar examined as DW1 who were Overseers have done cent percent verification of all types of Savings Account in Marudavallipalayam Branch Office during the period from 04.03.2002 to 16.03.2002. SW7 as the superior officer has signed the report and sent it to his superior officer. Munuswamy is the one examined to prove the statement of Rajammal. He has admitted during his examination that cent percent verification was done by him and DW1 jointly and the report that everything was "*satisfactory*" was recorded by DW1. Neither SW5 nor DW1 were able to state which were the Pass Books verified by them each. However, at the time of verification they have not noticed anything untoward. According to DW1, Pass Books were collected from depositors and were verified. He has given the verification result as "*satisfactory*". He did not notice any irregularity committed by the petitioner during his visit to the Post Office. Thus it could be seen that materials are lacking to prove the charges alleged against the petitioner.

21. It has been argued by the counsel for the Respondent that in the case of departmental enquiry it is enough that the charges are substantiated by circumstantial evidence. The counsel argued that available material is sufficient to prove the charges. In answer to this, the counsel for the petitioner has referred to the decision in UNION OF INDIA AND OTHERS VS. GYAN CHAND CHATTAR reported in 2009 12 SCC 78 where the Apex Court has held that a serious charge of corruption requires to be proved to the hilt as it brings civil and criminal consequences upon the employee concerned. A grave charge of quasi-criminal nature was required to be proved beyond any shadow of doubt and it cannot be proved on mere probabilities, it was further held.

22. In the present case even if probabilities only are taken into account the charges against the petitioner could not be said to be established. The Disciplinary Authority has found the charges proved without any foundation of law or facts. It is a case where the Management has mishandled the case. The petitioner could not be penalized on such hap hazard and non-existing evidence. I find that the punishment imposed by the Disciplinary Authority is without any justification. The petitioner is entitled to be reinstated in service. However backwages is restricted to 25%.

Accordingly, the Respondents are directed to reinstate the petitioner in service within a month of the award with 25% back wages, continuity of service and other attendant benefits. If the back wages are not paid within a month of the award, the amount will carry interest @ 9% per annum.

An award is passed accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st March, 2015)

K. P. PRASANNA KUMARI, Presiding Officer

#### Witnesses Examined:

For the 1st Party/Petitioner : None

For the 2nd Party/1st, 2nd and 3rd Management : None

#### Documents Marked On the petitioner's side

Ex.No.	Date	Description
Ex.W1	19.03.2003	Charge Memo
Ex.W2	26.05.2007	Letter to produce additional documents
Ex.W3	06.06.2007	Reply letter given by the Respondent
Ex.W4	11.06.2007	Letter to produce additional documents
Ex.W5	23.07.2007	Reply letter given by the Respondent
Ex.W6	30.07.2007	Review application
Ex.W7	08.09.2008	Reply letter given by the Respondent
Ex.W8	-	Enquiry proceedings
Ex.W9	26.04.2011	Presenting Officer's brief
Ex.W10	11.05.2011	Defence brief
Ex.W11	14.05.2011	Enquiry Report
Ex.W12	10.08.2011	Disagreement of Enquiry Report

Ex.W13	09.09.2011	Comments on disagreement of enquiry report
Ex.W14	31.10.2011	Order of the 3rd Respondent
Ex.W15	21.12.2011	Appeal petition to Appellate Authority
Ex.W16	05.01.2012	Continuation petition of appeal
Ex.W17	01.06.2012	Letter of personal hearing
Ex.W18	21.06.2012	Enquiry Proceedings
Ex.W19	06.07.2012	Order of the 2nd Respondent
Ex.W20	10.08.2007	Judgement in CC No. 231/2003
Ex.W21	02.10.2012	Petition filed by petitioner before ACL
Ex.W22	-	Counter filed by Respondent before ACL
Ex.W23	-	Rejoinder filed by petitioner before ACL
Ex.W24	-	Application for opening an account of Thangammal (DEX-I)
Ex.W25	-	Specimen signature book of M.V. Palayam (DEX-2)
Ex.W26	-	Verification report of M.V. Palayam (DEX-3)
Ex.W27	-	Verification report of M.V. Palayam (DEX-4)
Ex.W28	-	Verification report of M.V. Palayam (DEX-5)
Ex.W29	-	Verification report of M.V. Palayam (DEX-6)
Ex.W30	-	Visit remarks (DEX-7)
Ex.W31	-	Ledger Card of Thangammal (DEX-8)
Ex.W32	-	Ledger Card of Thangammal (DEX-9)
Ex.W33	-	Copy of Ledger Print Out (DEX-10)
Ex.W34	-	Statement of Thangammal (SEX-1)
Ex.W35	-	RD Pass Book of Thangammal (SEX-2)
Ex.W36	-	SB Pass Book of Rajammal (SEX-3)
Ex.W36(A)	-	Statement of Rajammal (SEX-4)
Ex.W37	-	RD Journal



Ex.W38	-	Branch Office Daily Account on 23.06.2001 (SEX-6)
Ex.W39	-	Branch Office Daily Account on 27.10.2001 (SEX-7)
Ex.W40	-	Branch Office Daily Account on 15.01.2002 (SEX-8)
Ex.W41	-	Branch Office Daily Account on 26.02.2002 (SEX-9)
Ex.W42	-	Branch Office Daily Account on 18.04.2002 (SEX-10)
Ex.W43	-	Branch Office Daily Account on 20.06.2002 (SEX-11)
Ex.W44	-	Branch Office Daily Account on 09.07.2001 (SEX-12)
Ex.W45	-	Branch Office Daily Account on 17.07.2001 (SEX-13)
Ex.W46	-	Branch Office Daily Account on 24.08.2001 (SEX-14)
Ex.W47	-	Branch Office Daily Account on 25.09.2001 (SEX-15)
Ex.W48	-	Branch Office Daily Account on 22.10.2001 (SEX-16)
Ex.W49	-	Branch Office Daily Account on 24.11.2001 (SEX-17)
Ex.W50	-	Branch Office Daily Account on 28.12.2001 (SEX-18)
Ex.W51	-	Branch Office Daily Account on 28.01.2002 (SEX-19)
Ex.W52	-	Branch Office Daily Account on 14.03.2002 (SEX-20)
Ex.W53	-	Branch Office Daily Account on 29.04.2001 (SEX-21)
Ex.W54	-	Branch Office Daily Account on 21.07.2001 (SEX-22)
Ex.W55	-	Branch Office Daily Account on 25.08.2001 (SEX-23)
Ex.W56	-	Branch Office Daily Account on 12.04.2001 (SEX-24)
Ex.W57	-	Branch Office SB Journal (SEX-25)
Ex.W58	-	Branch Office SB Journal (SEX-26)
Ex.W59	-	Branch Office Account (SEX-28)

**On the Management's side**

Ex. No.	Date	Description
	Nil	

नई दिल्ली, 10 अप्रैल, 2015

**का.आ. 775.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) का धारा 17 के अनुसरण में केन्द्रीय सरकार पूर्वोत्तर क्षेत्रीय कृषि विपणन निगम (NERAMAC) गुवाहाटी के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एव श्रम न्यायालय गुवाहाटी के पंचाट (संदर्भ संख्या 23/2012 और 24/2012) प्रकाशित करती है जो केन्द्रीय सरकार को 09/04/2015 को प्राप्त हुआ था।

[सं. एल-42011/35/2012-आई आर (डीयू)]

पी.के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 10th April, 2015

**S.O. 775.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D Ref No. 23/2012 & 24 of 2012) of the Central Government Industrial Tribunal Cum Labour Court, Guwahati now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the North Eastern Regional Agricultural Marketing Corporation Limited (NERAMAC), Guwahati and their workmen, which was received by the Central Government on 09/04/2015.

[No. L-42011/35/2012-IR(DU)]

P.K. VENUGOPAL, Desk Officer

**ANNEXURE****IN THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-  
CUM-LABOUR COURT, GUWAHATI, ASSAM**

Present: Shri L.C. Dey, M.A., LL./B.

Presiding Officer,

CGIT-cum-Labour Court, Guwahati.

**Ref. Case No. 23 of 2012 & 24 of 2012**

In the matter of an Industrial Dispute between:-

The workmen represented by the President, NERAMAC Workers' Union, Tripura State Committee, Tripura.

-Vrs-

The Management of North Eastern Regional Agricultural Marketing Corporation Limited, (NERAMAC), Guwahati.

**APPEARANCE:**

For the Workman: Mr. G.S. Bhattacharjee, Advocate,

Mr. P. Bhattacharjee, Advocate.

For the Management: Mr.P.K. Tiwari, Advocate.

Mr. R.J. Das, Advocate.

Mr. T. Wangcha, Advocate.

Date of Award: 01.04.2015

### AWARD

1. This Reference has been initiated on an Industrial Dispute between the Management of North Eastern Regional Agricultural Marketing Corporation Limited, (NERAMAC), Guwahati and their workmen represented by the President, NERAMAC Workers' Union Tripura State Committee, Tripura, which was referred by the Ministry of Labour, Government of India, New Delhi *vide* their order No.L-42011/35/2012-IR(DU) dated 12.07.2012. The Schedule of this Reference is as under.

### SCHEDULE

"Whether the action of the management of NERAMAC by not regularizing the services of 32 Nos. of casual/contingent workers (as per list in Annexure-A) or not granting equal pay for equal work at par to the regular employee instantly are legal and justified? What those group of casual workers/contingent workers are entitled to?"

It will not be out of context to mention here that the Ministry of Labour, Government of India *vide* their order No. L-42011/35/2012-IR(DU) dated 4.7.2012 referred the similar dispute raised by the NERAMAC Workers Union and the same was registered as Reference Case No. 23 of 2012. Simultaneously the instant reference was registered on receipt of the order of the Ministry of Labour, Government of India *vide* their even No. dated 12.7.2012 and both the cases had been proceeding separately. Thereafter, the matter was brought to the notice of this Tribunal and hence, at the instance of both the parties both the reference cases have been amalgamated together *vide* order dated 22.4.2013 passed in Ref. Case No. 23 of 2012.

2. The case of the Union namely North Eastern Regional Agricultural Marketing Corporation Limited (in short NERAMAC) Workers' Union, Tripura State Committee, Tripura, in brief, is that altogether 32 casual employees were appointed in various zonal as well as Head Office and DFJCP, Nalkata on various dates from 1989 to 2001 against various posts such as, Typist, Steno, Electrical works and workers (A/C, worker (MD), worker (Admn), Worker (Gate), on casual basis, following due procedure for engagement of those personnel under the said Union as given in the list of employees in their claim statement. Out of the said 32 casual employees 7 left the organization due to their personal causes and some of them expired during their service and hence, 25 employees have been working without any break continuously with the Organisation full

time basis and with the full satisfaction of the Management. Some of them completed 22 year of their service in the said post of casual worker though some facilities were attributed to them at par to the facility given to the regular employees such as, CPF, Leave, Gratuity and medical benefit etc. However, they are getting paltry amount of daily wages although they are working on full time basis since 1988. In 1990 the Union placed their demand for regularisation of the casual employees who are working at par with the regular employees with full satisfactions of the Management but without any result except assurance. The Board of Directors had taken the view in the year 2003 that the demands of regularisation on non formal way; and the said demand of regularisation of the casual employees though accepted by the Management in course of various agreement but all are in vain. At last the Union took the endeavour to place their demand before the Management in a formal manner and to agitate the matter for regularisation of the existing casual workers who were engaged against the sanctioned post and the Management on several occasions assured for regularisation of those workers but failed to materialized the same. Thereafter the Union raised the dispsute before the ALC(C), Silchar who held a proceeding after hearing both the parties in the matter and examining the statements of the parties proposed to hold a joint discussion/conciliation. Accordingly a Tripartite meeting was held on 29.11.11 amongst the Management, Union and the Assistant Labour Commissioner but no settlement could be arrived at. The Union mentioned that the Management in their note sheets page-61,62 and 63 which were collected under RTI Act, wherein the Management clearly stated that the 32 casual labourers would be regularized on 3 phases as per seniority which is reproduced below:

"Nsp-61

The committee's recommendation regarding regularisation of Casual Employees has not be avoided. Since there are 32 (thirty two) casual employees, it is suggested that those employees who had put in 10 (ten) years of service in NERAMAC may be considered suitably for regularization. As per the committee report, those who had completed 4 (four) years and above may be regularized. In this context, casual employees may be regularized in phased manner keeping in view with the financial burden on the corporation. 5 (five) employees *i.e.* 2 (two) casuals form H.O. and another 3 (three) from FJCP, Nalkata had been regularized in 1996 (Ref. P & A/14/1995-App-II at NSP-80). It is suggested that 32 (thirty two) casual employees may be regularized for 3 (three) phases as per their seniority which is furnished below:

Phas-I JDA'87.		Designation	Date from which working	scale
1.	Shri Ashish Acharjee	Worker	28.7.89	1935-1345
2.	Shri Swapan Debnath	Worker	16.8.89	1035-1345
FJCP Nalkata				
1.	Shri Somesh Chand	Typist	19.7.89	1135-1707
2.	Shri Thaingya Mog	Worker	13.6.89	1035-1345
3.	Shri Paritosh Bhowmik	Electrician	28.07.89	1095-1475
4.	Shri Babul Ch. Deb	Worker	1.09.89	1035-1345
5.	Ms. Dipti Garh	Worker	1.08.92	1035-1345
6.	Shri Meghmohan Tripura (Watch & Ward staff)	Worker	14.8.89	1035-1345 (Reinstated)
7.	Shri Rabiou Debbarma (Watch & Ward staff)	Worker	01.08.89	1035-1345
Phase-II				
1.	Ms. Lakshmi Deka	typist (Hindi)	03.07.95	1135-1707
2.	Shri Bijoy Baruah	Worker	13.5.96	1035-1345
ZO/Assam				
1.	Shri Ananta Saikia	Worker	3.7.95	1035-1345
2.	Shri R.K. Singh	Typist	2.5.96	1135-1707
3.	Shri Dilip Kalita	Worker	6.5.96	1035-1345
ZO/Agartala				
1.	Ms. Seema Debnath	Typist	21.7.94	1135-1707
2.	Shri B.K. Deb	Typist	20.5.96	1135-1707
3.	Shri Kanan Bala Deb	Worker	1.10.94	1035-1345
FJCP, Nalkata				
1.	Shri Situ Chakraborty	Steno/Typist	22.9.94	1135-1707
2.	Shri Manas Bhowmik	Typist	1.2.96	1135-1707
Phase-III				
1.	Ms Sukla Goswami	Typist	14.11.96	1135-1707
2.	Shri Haran Medhi	worker	4.11.96	1035-1345
3.	Shri G Baruah	worker	1.9.99	1035-1345
4.	Shri L.P. Singh	worker	17.11.97	1035-1345
NSP 63				
Place of posting		Designation	Date from which working	
Scale FDA:89				
ZO/Assam				
1.	Shri Ramesh Likson	worker	21.9.96	1035-1345
2.	Shri Bijoy Sharma	Worker	5.7.96	1035-1345
3.	Shri Shivnath Barua	Worker	9.8.96	1035-1345
4.	Shri Manik Barman	Worker	21.5.98	1035-1345
5.	Shri Joseph R.H. Zuva	Worker	17.6.99	1035-1345
ZO/Agartala				
1.	Shri B. Debnath	Typist	2.7.96	1135-1707
2.	Shri K. Laskar	Worker	12.9.96	1035-1345
3.	Shri Chandan Paul	Worker	14.9.96	1035-1345
4.	Shri Seema Das	Worker	1.8.98	1035-1345

Shri Pralay Sinha has been engaged on 17.06.2003 as General Worker, but the committee has recommended not to engage casual worker after the year 2000 for the period of more than 90 days. In this regard, competent authority may kindly take a decision. In the corporation, regularization of above members may be absorbed against the existing sanctioned posts in a phased manner as proposed above and the date of effect may kindly be decided by the competent authority.

Submitted for perusal and decision please.

Manager (P&A)  
16.10.2003

Is Sl. 6 and 7 at NSP-62 to be considered from 1989 or 2001

Give clarity as per rule.

Since both Shri Meghmohan Tripura and Shri Rabi Debbarma had been acquitted by Sessions Court, the date of their joining at Nalkata is from 14.08.89 to 1.9.89 prospectively will be considered for regularization purpose.

FFO

Can you please address A with relevant to X at NSP...."

The ALC(C), Silchar tried his best to settled the dispute but failed. Thereafter the matter was referred to the Government of India, Ministry of Labour who referred the dispute to this Tribunal for adjudication. Hence, the Union prayed to hear the parties and after appreciating the document and record would pass the appropriate order/orders directing the Management to comply their accepted recommendation of the Committee dated 16.10.03 as mentioned in NHP 61 to 63 and to pass any other order/orders which deem fit and proper for the ends of justice.

The Union by filing an Addl. Claim Statement pleaded that financial help of the Corporation demonstrating weak is not true, and the Management tried to suppress the truth with design to deprive the workmen from their legitimate demand for regularization. The actual scenario is that the NERAMAC is running on huge annual profit from 2001 to till 2012-13 financial years which would be clear from the annual report published by the NERAMAC from 20th Annual Report to 30th Annual Report wherein it has been shown that the NERAMAC is doing net profit and the financial structure of NERAMAC is good and stable. Hence, the statements made by the Management that the financial health of the Corporation does not permit it to regulars these casual employees, as it would not be prudent to incur additional burden by regularizing the service of these casual employees, are totally false and incorrect. The Union added that from 1987 to 1996 the similar situated persons were regularized in phases and it was the normal practice of the Management to regularize the casual employees in course of their service on the basis of

experience and eligibility. In support of their contention the union enclosed a statement showing the workers who were regularized.

The Management of NERAMAC, on the other hand, admitting the engagement of around 32 numbers of casual employees during the period of 1989-2001 and the break up of these employees, their designation and respective dates of engagement as shown in the claim statement submitted by the Union; pleaded that these employees were engaged without any selection process on purely pick and choose basis due to administrative exigency at the relevant time and they were not engaged against any sanctioned post. In most of the cases the circumstances which necessitated the engagement of these casual employees ceased to exist long time ago but on purely humanitarian ground their engagement was not terminated. It is also mentioned that as per the instruction of the Government of India, NERAMAC has to generate its own revenue for meeting the recurring expenditure, but the Corporation was incurring loss from its inception. It was referred to the BIFR during 1995-96 as its net worth was eroded because of continuous loss and as on date it has accumulated loss of Rs. 4.81 crores. In order to ascertaining the feasibility of the regularization of these casual employees, a Committee headed by Mr. L. Rahman, General Manager (Finance and Accounts) was formed, which submitted its report on 22.9.03 recommending the regularization of these casual employees who had completed 4 years and above in 3 phases as per seniority. The then Managing Director considered the report of the committee and accepted its recommendation in principle subject to availability and requisite financial resources. In view of the poor financial position the regularization of these casual employees could not be possible and the then Managing Director of NERAMAC himself put the matter on hold till the improvement in the financial condition of the corporation. It is pleaded by the Management that the regularization of the casual employees is a matter of policy decision which can only be taken by the Board of Directors of the Corporation and hence, the recommendation of the Committee and acceptance of its report by the Managing Director can not make it mandatory for the Corporation for regularization of the service of the casual employees unless decision to that effect are taken by the Board of Directors. The Management denied that the casual employees are working at par with the regular employees and that the said casual workers were engaged against the sanctioned post. Their engagement was in a pick and choose manner purely on contingency basis and exigencies. It is mentioned by the Management that in FJCP, Nalkata the nature of work is only seasonal and it consequently remains operational only for w/e months in a year. Thus the casual employees of



FJCP, Nalkata remains idle for the rest of year and due to poor financial health it would not be prudent to incur additional financial burden by regularizing the service of those casual employees. The Management also contended that the casual employees in question are not working against the sanctioned posts in the Corporation against which these casual employees can be adjusted. It is also denied by the management that the continuous engagement of the casual employees is essential for the smooth running of the Corporation.

3. Both the parties examined their witnesses and have proved the documents in order to establish their respective pleadings. The Union examined altogether 3 witnesses while the Management examined only one.

Accordingly to the workmen witness No. 1, Shri Manas Bhowmik, who is working as Store In-Charge (Casual) under the Management of NERAMAC from 12.2.96 posted at Nalkata under Dhalai, Tripura District and holding the post of Vice President, NERAMAC Workers' Union, Tripura State Committee, Tripura, he is aware of the fact that Union on several occasions pursued the demand for their regularization by the Management as the NERAMAC has the need of essential work force to run the projects and established in the North Eastern States. He also mentioned that out of 32 casual employees 7 numbers of them left the organization due to their personal causes and some of them expired during in service while the total approved strength of employees of NERAMAC is more than 266, but presently only more than 91 to 99 workers are working at NERAMAC including regular casual and contractual workers; and he also knows that the NERAMAC is running on profit from 2002 and onwards and they have shortage of manpower to run smoothly the manufacturing unit at Agartala, Nankata, Burnihat and Mankachar etc. The W.W. 1 also stated that he has been working as Store In-Charge from 1996 having requisite qualification and experience but till date he has not been regularized although he was assured that he would be absorbed against regular vacant post which is existing with the Management. The Management have regularized 18 casual workers in phase from 1987 to 1996 and hence, being similarly situated persons it is his legitimate expectation that he might be absorbed in regular post but no fruitful result has yet come forth. The demand of their Union was forwarded to the ALC(C), Silchar for amicable settlement but due to rigid attitude of the Management the dispute could not be settled and the same was referred to the Central Government by the ALC(C), Silchar.

The W.W. 1 again mentioned that initially the Management accepted the Rahman Committee's report and the Board of Directors also consented to act as per the

Rahman Committee's report and to regularize the 25 casual employees in three phases as per NHP 61 to 65 (Note Sheet Presented before the Assistant Labour Commissioner), but the Management has taken a stand of maintaining silence on the matter taking a volt face of prior consent and decision. He added that he along with other casual employees are discharging their duties at par with the regular employees and receiving the meager wages which are not adequate to maintain their families; and their demand is legitimate. He has proved the report of the L. Rahman Committee regarding regularization of the casual employees; the Note Sheets containing six pages prepared by the Management regarding regularization of casual employees on the basis of the L. Rahman Committee report; the information regarding the regularization of the casual employees given by the Assistant Manager (A/C), Nankata, Agartala; the letter from the Assistance Labour Commissioner (C), Silchar addressed to Managing Director, NERAMAC, Guwahati regarding regularization of the casual employees; the recruitment Rules of NERAMAC; the details of sanctioned strength existing post in NERAMAC's various units *vide* Exhibit-1 to Exhibit-6 respectively. He has also proved the Balance Sheet for the years 2005-06; 2006-07; 2007-08; 2008-09; 2009-10; 2010-11 and 2011-12 *vide* Exhibit-7 to Exhibit-13 respectively.

In course of his cross-examination the W.W. 1 stated that he applied for the post of Typist in response to an advertisement made by NERAMAC and on being called he appeared for the speed test and viva voce test before the appointing authority and ultimately he was selected and appointment letter was issued to him by post and thereafter he joined on 12.2.96 as Typist. He also mentioned that about 10 years of his service as Typist he was appointed as Store In-charge, and considering the volume of works as well as the position of the strength of the workers in various Project under NERAMAC as it gathered in course of his due discharge of duty he felt the need of work force to run the essential works of the project. He again mentioned that as Store In-Charge he has to maintain the accounts regarding spare parts of the machineries, machineries, furniture, electrical goods, mechanical equipment, etc. of the Nankata project and all machineries, spare parts are being used in the project whole year. He also said that he has been drawing wages on daily basis and enjoying annual increment, EL, CH (availed against the over time duties), medical leave etc. and they are drawing medical allowance annually of Rs. 2400. However, he denied the suggestion tendered by the learned Advocate for the Management that he was not given any call letter nor any interview was held including speed test and viva voce, that he was appointed on pick and choose manner, that the NERAMAC is running at profit from 2002 onwards, that

the Management have acquit shortage of manpower to run its functioning smoothly that he is not discharging his duty at par with the regular employees from 1996; that the works of NERAMAC is purely seasonal in nature and continues for 2 to 3 months in a year; and that he was never assured by the Management for regularization against the vacant post.

The W.W. 2, Sri Somesh Chanda being one of the members of the claimant Union posted at Agartala under the Management of NERAMAC, stated that on several occasions the Union persuaded the demand for regularization that the Management has the need for essential work force to run the project and the establishment in the North Eastern States. He was working under the Management since 1989 onwards including other 32 casual employees. Out of whom 7 numbers of the employees left the organization due to their personal causes and some of them expired during in service. He said that total project strength of employees of NERAMAC is more than 266 but at present only not more than 91 to 92 workers are working in NERAMAC including regular and contractual workers and that their organization is running on profit from 2002 onwards. He added that he has been working as Accounts Assistant under NERAMAC with full integrity, honesty and devotion and discharging his duty at par with the regular employees from 1989 having the requisite qualification but he has not been regularized in spite of assurance for his absorption in the regular vacant post given on different occasions. The W.W.2 again supporting the statement of W.W. 1, deposed that the Management of NERAMAC already regularized 18 casual workers on phases and as such, being similarly situated persons which is his legitimate expectation that he might be absorbed on regular post, but till date no fruitful result has come forth. He added that the Management initially accepted the Rahman Committee Report and the Board of Directors also consented to act as per the Rahman Committee report regarding regularization 25 employees in three phases as per NHP 62 to 65 (Note Sheets presented before the Assistant Labour Commissioner) but subsequently the Management remained silent on the matter as such, he felt that the demand of their Union is their legitimate right of survival.

In course of his cross-examination the W.W. 2 mentioned that originally he was working under National Building Construction Corporation as Typist and the said National Building Construction Corporation was assigned the job of construction of building owned by NERAMAC and on completion of works he left the project. In the mean time the NERAMAC made an advertisement for the post of

typist and finding no suitable person he was called by a letter by the Office of the NERAMAC and appointed him as typist (casual) he also mentioned that after 7 years of his service as Typist he was promoted to the post of Account Assistant (casual). He said that he has got appointment letter which he has not produced before the Court. From the verbal statement as well as the assurance given by their Senior Officers of the Management he came know that there are need of workers to run the essential works of the Project. He categorically denied the suggestion advanced by the Management that NERAMAC was not running on profit, that there was no need for engaging the workers afresh to run the work of the project smoothly; that the casual workers were entrusted with the exigency jobs as and when required; and that the report submitted by the L. Rahman Committee was not accepted by the Board of Directors of NERAMAC.

The W.W.3, Mrs. Laxmi Deka Sikdar who being the member of the claimant union working under the Management of NERAMAC at Guwahati as Typist since 1995 made similar statements those adduced by the W.W. 1 & W.W. 2. She has submitted documents on behalf of the Union *vide* Exhibit-14, the application for appointment submitted by the workman Manash Bhowmik; Exhibit-15, the call letter issued by the Manager, NERAMAC to the workman Manash Bhowmik for appearing in the interview; the Exhibit-16 the appointment letter issued by the Manager Administration, FJCP, NERAMAC, Nalkhata; Exhibit-17 engagement order dated 22.9.94 issued by the Management in favour of the workman Situ Chakrabarty; Exhibit-18 is the joining report submitted by Situ Chakrabarty; Exhibit-19, engagement order dated 29.12.94 issued by the Management in favour of the workman Situ Chakrabarty; Exhibit-20 the office order dated 19.8.94 regarding engagement of workman Miss Sima Debnath; Exhibit-21, the engagement order dated 19.7.96 issued by the Management in favour of the workman Bikram Debnath; Exhibit-22 the order dated 14.8.89 issued by the Management regarding engagement of the workman Megamohan Tripura as Security Assistant; Exhibit-23 the engagement order dated 8.3.90 issued in favour of the workman Rabi Deb Barma; Exhibit-24 the engagement order dated 30.12.93 issued by the Management in favour of workman Dipti Garh; Exhibit-25 is the engagement order dated 8.3.90 issued by the Management in favour of the workman Babul Ch. Deb; Exhibit-26 is the engagement order dated 14.8.89 issued by the Management in favour of the workman Somesh Chandra; Exhibit-27 is the order of engagement issued by the Management of favour of the workman Chandan Paul; Exhibit-28 is an official communication issued by the CMD of NERAMAC asking the workman Swapan Debnath to go to Agartala on official duty and by this letter Sri Swapan Debnath was entrusted to work in the

Zonal Office, Agartala instead of sending him back to Calcutta and he was allowed to work in office for a monthly pay amounting to Rs. 750/- on daily wage basis; Exhibit-29 is a office order dated 28.7.89 issued by the Management regarding appointment of Sri Ashish Acharjee as night Guard; Exhibit-30 is the office order dated 11.11.87 issued by the Management appointed Sri Kiran Bala Deb as Casual Worker; Exhibit-31 is a certificate issued by the Management in favour of the workman Paritosh Bhowmik regarding his experience as Electrician on casual basis; Exhibit-32 is No Objection Certificate issued by the management in favour of the workman Smti Laxmi Deka expressing their no objection to register her name in the Employment Exchange; Exhibit-33 is the certificate issued by the management stating that the workman Laxmi Deka has been working in their office as Hindi Typist/Assistant on daily wage basis.

During her cross examination the W.W.3 stated that in the year 2004 the Management completed all the process for regularisation of the employees in their establishment and a list has already been prepared and approved but it was not published and she has been translating all the Annual Reports and Balance Sheets of the NERAMAC since after her joining till date and from this document she came to know that the Management is running on profit. She also added that since her joining till 2008 she was entrusted offer to the works regarding administration and from the record she came to know that there is shortage of staff in their establishment; and that in course of meeting between the Union and the Management she came to know that the Management has accepted the Rahman Committee's Report. She also denied the suggestion tendered by the Management that the Exhibit-14, Exhibit-15, Exhibit-20, Exhibit-22, Exhibit-23, Exhibit-28, Exhibit-29, Exhibit-32, and Exhibit-33 are not issued by the Management.

4. The Management examined one witness Sri K.C. Sasidhara Kurup, the General Manager (Marketing) of NERAMAC Ltd (MW.1) who stated that during the year 1989 to 1999 around 32 numbers of casual employees were engaged by the NERAMAC and out of the said 32 casual employees 8 were engaged in 1989, 1 in the year 1992, 3 in the year 1994, 2 in the year 1995, 13 in the year 1996, 2 in the year 1997, 2 in the year 1998, and 1 in the year 1999 on contingency basis. Out of these casual employees 9 were engaged as Typist and 1 was given the work of Electrician and the remaining 22 casual employees were engaged as manual labours who undertaking various duties of Grade-IV employees like security, watch and ward and other ancillary works like that of attendants and peons. But the

nature of works for which these employees were engaged was not perennial, and they were engaged depending upon the nature of scheme of the Government of India and the additional works which would be undertaken by the Corporation during the aforesaid period. It is mentioned that the engagement of these employees was not against any sanctioned post, nor selection process under the Rules were followed in engaging them, but was purely on administrative exigencies which had arisen on account of additional works. The MW.1 further stated that as per the instruction of the Government of India, the Corporation is to generate its own revenue for meeting the recurring expenses and during the period from 2003 to 2007 due to various factors of economies of scale the Corporation incurred losses and it was reduced to a loss making unit accumulating loss of Rs. 4.81 crores for which the Corporation was even referred to BIFR. In the year 2003 when the Corporation was reduced to a loss making unit and its financial fortunes were showing a downward trend. The management of the Corporation dealt with the issue of regularisation of casual employees and in this regard a Committee headed by Mr. L. Rahman, GM (F & A) was constituted which submitted its report on 30.9.03. In its report the Committee recommended the regularisation of these casual labourer for NERAMAC who have completed 4 years and even in 3 phases as per seniority. However the Committee in its report subjected such regularisation to the availability of requisite financial resources. Accordingly the then Managing Director considered the report and accepted its recommendation in principle but the regularisation of casual employees was not done due to poor financial state of Corporation. It is added that regularisation is a matter of policy decision which can be taken by the Board of Directors of the Corporation and hence, the recommendation of the Committee and acceptance of its report by the Managing Director can not ipso facto make it mandatory for the Corporation to regularize the service for the casual employees unless decision to this effect are taken by the Board of Directors. The MW.1 again mentioned that out of the said 32 casual employees 6 have already left the Corporation and the remaining 26 are spread over in the various offices of the Corporation; and 8 out of the said 26 casual employees in FJCP, Nalkata normally remain without work in a long time because the nature of work therein is only seasonal as the Nalkata Project is remain in operational only for 2-3 months in a year. Likewise, the work of remaining casual employees of the other units is also not perennial. Even though the Corporation is continuing the service of these casual employees purely on humanitarian ground and as such, the Corporation can ill afford to regularize their services. In



view of the poor financial health of the Corporation it would not be prudent to incur the additional financial burden by regularisation of the service of these casual employees. He has proved the order dt. 25.6.2014 issued by the Company Secretary & I/C P & A authorizing him to depose in this reference case *vide* Exhibit-A.

During his cross-examination the MW.1 stated that he has been working in NERAMAC for last 30 years and initially he joined there as Secretary to the Chairman-cum-MD, NERAMAC. He availed promotion to the present post after getting 2 promotions. The workers of NERAMAC are availing medical reimbursement to the extent upto Rs. 2400/- per year and the Managing Director, NERAMAC is also availing medical reimbursement at the same rate. He also said that the casual worker involved in this case are availing medical leave, gratuity, annual increment at par with the regular employees and as regards annual leave the workers are getting annual leave one day in every 20 working days. He denied the suggestion tendered by the learned counsel for the workman that the statement made in para-2 in his evidence on Affidavit that out of the casual employees 9 were engaged as Typist and 1 as Electrician, and the remaining 22 casual employees were engaged as manual labours for undertaking various duties of grade-IV employees like security, watch & ward and other ancillary works like that of attendants and peons, concludes that the nature of these employees are at par with the work of regular employees and that the nature of work of the said casual labours is perennial. He also denied that the present workmen performing their duties at par with the regular employees as they were not retrenched, they became part and parcel of the NERAMAC and without them NERAMAC can not run its function. MW1 further denied the suggestion of the Union that the present workmen were engaged against the sanctioned post and that selection process was followed in engaging them; and that during the period 2003 to 2007 the Corporation incurred losses and it was reduced to a loss making Unit and as on date its accumulated loss of Rs. 4.81 Crores. He also said that since they have not submitted any document in support of this statement he can not say whether the subsidies received from the Government of India by the NERAMAC till date has been submitted or not. He further denied that the profit and loss account submitted by the NERAMAC *vide* Exhibit-7 to Exhibit-13 for the period 2005-06 to 2012-13 are prepared in collusion with the management of NERAMAC and private Auditors, and that due to preparation of the said collusive profit and loss statement the CAG has passed several comments on different occasion. The Management witness concerned added that prior to reference to the BIFR (Board of Industrial and Financial Reconstruction)

the NERAMA never declared any closure or lay off even after that also there was no occasion of lay off or closure. He admitted that one of the casual employees namely Shyamal Chandra Dey was regularized in the year 2002 to the post of Junior Assistant to NERAMAC even after reference to the BIFR and altogether 18 numbers of employees were regularized from 1987 to 1996. However, he denied the suggestion that since they are regularizing the employees as mentioned above even after reference to the BIFR their Industry is not a sick industry. The MW.1 further mentioned that the Management was represented by their authorized persons before the L. Rahman Committee and he was one of the members of Mr. L. Rahman Committee. However, he denied the suggestion that the said L. Rahman Committee has passed its report after consulting the records of the management and financial aspects of the Industry as well as the information/documents submitted by the Union. He also admitted that he being one of the members of the Committee he signed on every page of the report of the Committee as he agreed to the same; and at the time of preparation of the report of the Committee they have considered the recent judgement pronounced by various Court including the Apex Court regarding regularisation of the casual employees. He also said that the Exhibit-2 (6 pages), the Note Sheets Pages from 61 to 66 which were processed by the Senior Manager (P & A), Mr. D. Sarma and submitted the same to the Executive Director who again put up the same before the General Manager (F & A), who in his turn put up the same before the Executive Director who again put up the same before the Managing Director and thereafter the said matter was discussed between the Managing Director and the General Manager of the NERAMAC and then it was sent to the Executive Director who again re-marked the same to the Managing Director and lastly the Managing Director approved the proposal marked at the portion of "X" NHP page-61. He again denied the suggestion that the Management of NERAMAC has taken the decision regarding regularisation of the present casual employees in consultation with the Exhibit-1 *i.e.* the report of the Rahman Committee, financial position of the Industry feasibility of regularisation of casual employees and the nature of job undertaken by the casual employees; and that after acceptance of the recommendation of the L. Rahman Committee by the Management his statement "since regularisation of the casual employees was subject to the available requisite financial resources in view of the poor financial state of the Corporation the regularisation of these casual employees would not be possible" is false. The M.W. 1 admitted that the word "discussed" as mentioned page-66 of NHP 65 means discussion between General Manager and the Managing Director; but he denied



the suggestion that the word 'discussed' as mentioned in 66 of NHP 65 includes the discussion between the Management and the Board of Directors. He said that as per document marked as Exhibit-6 the existing strength of sanctioned post of NERAMAC is 272 and the existing position of the regular appointees is 42 and the present casual employees 26 *i.e.* total 68 numbers.

5. Both the parties submitted their written arguments. They also made oral arguments at length. I have gone through the entire C.R. along with the case record and the written argument submitted by both the parties.

Mr. G.S. Bhattacharjee, learned Advocate for the NERAMAC workers Union, Tripura State Committee, Tripura, submitted that the NERAMAC is a Central Government Organisation being 100% financed by the Central Government, having its Board of Directors duly empowered by the Central Government to manage and run the organization. The NERAMAC have spread their established at different zones in North Eastern States wherein 32 casual employees under various zones, as well as Head Office and DFJP, Nalkata were appointed at different dates from 1989 to 2001 against the sanctioned post such as Typist/Steno, Electrician, and some of them were appointed to discharge the works of A/C MD, Administration Class-IV employee, Night Guards etc. following the due procedure *i.e.* interview the written test, type writing test as required against the posts. Among the said 32 casual employees some of them have expired and some of them have left the organization and only 25 casual employees are now contesting this case; and the said 25 workers were working without any break in service continuously still with the organization full time basis and to the full satisfaction of the Management at par with the regular employees. Some of these workmen completed 22 years of their services in their respective posts and some facilities were attributed to them at par with those given to the regular employees such as CPF, Leave, Gratuity and legal benefit, etc. but they are deprived of regular pay scale though some of them are holding the charge of cash and authorized signatory of cheques as DDO of the various units of the NERAMAC since 1989 to 2001.

Mr. Bhattacharjee, further submitted that the sanctioned strength of the posts in NERAMAC is 272 and at present altogether 42 numbers of workers including the said 25 casual workers who are performing the perennial nature of work at par with the regular employees, in the organization. He also mentioned that the Union raised their demand for regularisation from the year 1990 and in the year 2003 the Management placed the matter of regularisation before the

L. Rahman Committee for scrutiny the entire facts and circumstances and also the financial involvement on the issue for examining the viability of the demand for regularisation. Accordingly the learned L. Rahman Committee after hearing both the sides submitted its report recommending regularisation of all the employees working on daily wage basis prior to 2000 in phases. Mr. Bhattacharjee, learned Advocate for the Union added that the management after having the report accepted the same and necessary notes were put up before the various authorities of the management and all consented to the said notes putting their signatures for regularisation of 25 casual employees, and lastly financial mathematics were prepared for involvement of the fund and the matter was placed before the Board of Directors which accepted the proposal and sanctioned the proposal for regularisation *vide* note sheet page Nos. 61-66 marked as Exhibit-2. But the management did not regularize the said casual employees.

Learned Advocate for the Union again pointed out that the stand of the management that the aforementioned casual workers have no right to be regularized as they are employed seasonally, they are not doing the works of regular employees, that they were not appointed by the Management following the due process of appointment but only engaged for temporary purposes of the management, that the said workers were not appointed against the sanctioned posts, that the financial capacity of the management is not favourable for regularisation of these workmen; and that the management never accepted the proposal of regularisation of the said workers; and that the Board of Directors did not allow the same is not at all true and is against the principles of law as well as the decision of the Hon'ble Apex Court on the matter. In support of his contention Mr. Bhattacharjee, Learned Advocate for the Union relied upon the case of Secretary, State of Karnataka and Ors—*vrs*—Umadevi(3) and Ors. reported in (2006) 4 SCC. Mr. Bhattacharjee, Learned Advocate for the Union also referred the ratio of the cases in (1) Ajmeer Vidyut Vitaran Nigam and Ors—*vrs*—Robin Kr. Sainee and Rajasthan State Electricity Board and Ors.—*vrs*—Shyamlal reported in (2010) 15 SCC 17, (3) Secretary to the Government, School Education Department, Chennai—*vrs*—R. Govindaswami and Ors. published in (2014) 4 SCC 769 and (4) in State of Karnataka and Ors.—*vrs* M.L. Kesari and Ors. published in (2010) 9 SCC 247.

6. Mr. R.J. Das. Learned Advocate for the management of NERAMAC submitted that the NERAMAC is a central government organization which is managed and controlled by the Board of Directors appointed by the government and the said organization was formed with the objective to

purchase the marketable surplus fruits and vegetables in the North Eastern Region to the maximum possible extent through a network of centers and to make necessary arrangement for its processing and marketing; under the administrative control of Ministry of Development of North Eastern Region; and as per the instruction of the Government of India; the Corporation has to generate its own revenue for meeting the recurring expenses. He added that the NERAMAC engaged 32 numbers of casual employees and out of the said 32 employees 9 were engaged as Typists and one was given the work of Electrician and remaining 22 casual employees were engaged as manual labourers for undertaking various duties of Grade-IV employees like Security, watch & ward and other ancillary works like that of porter and peons; but the nature of work for which those casual employees were engaged was not perennial and they were engaged depending upon the nature of scheme of the Government of India and the additional works which were to be undertake by the NERAMAC. He also mentioned that there employees were not engaged against any sanctioned post, nor any selection process under the rules was followed. Mr. Das, Learned Advocate for the Management further stated that the above mentioned casual employees placed their demand for regularisation since long and in the year 2003 the Management constituted a committee to look into the demand for regularisation of the said casual employees, headed by Mr. L. Rahman. According the L. Rahman Committee submitted its report *vide* it letter dated 22.9.2003 recommending that all the workers on daily basis prior to 2000 may be regularized and the service of those, if any, who joined after 2000 may be disposed off with immediate effect no workman be engaged on casual basis for duration of more that 90 days. The then Managing Director on receipt of the recommendation of the L.R. Committee, considered the report and accepted its recommendation in principle. But in view of poor financial state of the Corporation the regularisation of these casual employees could not be possible. The then Managing Director of the Corporation himself put the matter on hold till the improvement of the financial condition of the Corporation, and hence, the recommendation of the Committee was not given effect too. Mr. Das, Learned Advocate for the Management pointed out that only 14 out of the 25 casual employees have produced their engagement letter *vide* Exhibit-14 to Exhibit-31; and the remaining claimants have not been able to produce their appointment letters. He also submitted that the Union claiming regularisation of the said 25 casual employees on the basis of approval to the recommendation of the Mr. L. Rahman Committee by the Managing Director of NERAMAC; but the then M.D. mooted the proposal for regularisation in phase manner but with a rider that the regularisation be effected keeping in view with the financial burden on the NERAMAC. But the Union has not been able to prove that out of the total sanctioned strength of 242 the existing position is 42 excluding the casual employees;

and that the NERAMAC has financial capacity and they can regularize the said 25 casual employees in phase for smooth running of the Units, the Union also failed to establish that they were appointed following the due procedure of selection and the appointment was made against the sanctioned post. As such, the appointment of the said casual workers is illegal and cannot be regularized. Mr. Das, Learned Advocate also pleaded that exhibit-2. *i.e.* the NSP 61 demonstrate the then Managing Director, NERAMAC accepted the recommendation of the L. Rahman Committee in principle and mooted a proposal for regularisation of casual employees in a phase manner but with a rider that the regularisation be effected keeping in view with the financial burden of the NERAMAC with the following endroement.

"In this context, casual employees may be regularized in phase manner keeping in view with the financial burden on the corporation."

NSP 65 which is part of the Exhibit-2 wherein it is quoted.

"Keeping in view the above aspect, the competent authority may consider to regularse the casual employees of the Corporation in a phased manner."

Thus the then Managing Director along with some other officials/employees had discussed the recommendation of the L. Rahman Committee and its practical implementation and the said reflection in the Exhibit-2 (NSP 61-NSP 65) can not replace the statutory requirement of passing a Board resolution in a prescribed manner for taking a decision by the Board of Directors on behalf of the Company. As such, the recommendation of the said in house Committee can not vest any legal right of the 25 casual employees.

Mr. R. J. Das again pointed out that the NERAMAC is running on loss and it was referred to the Board of Industrial and Financial Reconstruction. Further the audited balance report for the year 2003 to 2007 reflects that due to various factors of economics of scale, NERAMAC incurred losses and an on date it has accumulated loss of 4.81 crores which is evident from the document marked as Exhibit-7 to Exhibit-13 which shows the deteriorating financial health of the Corporation. As the engagement of the said casual workers was not done under due procedure of law in conformity with the recruitment rules of NERAMAC and as they were engaged only in a pick and choose manner to perform the job which were not perennial in nature, but they were engaged in times of exigency and hence, the engagement was not against any sanctioned post, as such, they cannot claim the right of regularisation as it would violative of Articles 14 and 16 of the Constitution. Mr. Das placed reliance in *Umadevi (3) case (2006) 4 SCC 1*, *Hindustan Aeronautics Ltd.—vrs—BB Singh (2007) 6 SCC 207*. He also mentioned that this Court may not take a sympathetic view while deciding the claim of the workers and in this connection he has draw my attention to the case of *Executive Engineer-vrs-Digam Bara Rao* reported in *(2004) 8 SCC 262*.

7. In order to arrive at a just and reasonable decision of this dispute the following pertinent questions are required to be answered.

- (i) Whether the appointment of the workmen involved in this reference was illegal?
- (ii) Whether the said workmen were appointed against the sanctioned posts?
- (iii) That the workmen are discharging similar nature of works done by the regular employees of the Management.?
- (iv) Whether the financial position of the NERAMAC does not permit regularisation of the workmen raising the dispute.

The evidence of the workmen witness No. 1, shows that he has been discharging his duties under the Management of NERAMAC with full integrity, devotion and honesty at par with the regular employees since 1996 having the requisite qualification and experience and he was working as Store Incharge under NERAMAC at Nalkhata and he applied for the post of Typist in response to an advertisement by the NERAMAC; and that he was called for speed test as well as viva-voce test. Accordingly the faced both the speed test and viva-voce test before the appointing authority and he joined as typist & after 10 years of his continuous service he was appointed as Store-In-charge by the NERAMAC and he was performing the duties at par with those discharge by the regular employees since 1996 and has been enjoying EL, Casual Holiday, which can be availed against over time duty, medical leave, etc. They are also drawing medical allowance annually @ 2400/- and getting annual increment.

The evidence of W.W.2, one of the casual employees working as Account Assistant under the NERAMAC since 19.7.89 shows that he was appointed in 1989 on the basis of an advertisement of NERAMAC, having requisite qualification (B.Com) and experience but till date he was not regularized although the Management, on several occasion assured for his regularisation against the existing vacant post. He further said that the management already regularized 18 casual workers in phases since 1987 to 1996; and that the management initially accepted the L.R. Committee report and the Board of Directors also consented to act as per the L.R. Committee's report and to regularize the 25 casual employees in 3 phases as per the NSP 62 to 65 (Exhibit-2) and 7 years of his due discharge of his duty he was promoted to the post of Account Assistant. Thus it is clear that the evidence of the W.W.1 & W.W.2 is corroborating as regards their claim that the said 25 casual employees were appointed by the Management after holding interview both written and viva-voce. Although they could not produce the appointment letters in respect of all the claimants, their testimony is found untwisted & unshaken in course of their cross-examination. Further, plea of the Union that against 272 permanent vacancy of NERAMAC only 68 employees including the said 25 casual employees are working at present is admitted by the Management *vide* Exhibit-6.

8. From the evidence of management witness No. 1, it is found admitted fact that from the year 1989 to 1999, 32 numbers of casual employees were engaged by the NERAMAC as casual employees on contingency basis in various capacities from time to time; and in the year 2003 the management in order to deal with the issue of regularisation of these casual employees constituted Mr. L.R. Committee for examining the matter. It was also admitted that the Committee headed by Mr. L. R Rahman, General Manager, (F & A) submitted his report on 30.9.03 recommending regularisation of these casual employees who had completed 4 years and above in three phases as per seniority and the recommendation of the said committee was accepted by the Managing Director. The M.W. 1 also admitted that the said casual workers are getting medical reimbursement to the extent upto Rs. 2400/- per year and they are also availing medical leave, gratuity, annual increment, Government holidays and the annual leave at par with the regular employees. He also admitted that the said casual employees were engaged in various jobs as Typist, Electrician, Security, Watch and Ward, Attendants and Peons and the nature of these employees are at par with the works of regular employees, although he denied that the nature of the work of the said employees is not perennial. He further admitted that one of the casual employees namely Sri Shyamal Ch. Dey has been regularized in the year 2002 to the post of Junior Assistant and even after reference to the Board of Industry and Financial Reconstruction (BIFR) altogether 18 employees of NERAMAC were regularized.

In Secretary, State of Karnataka and Ors.*vrs*-Umadevi (3) and others reported in (2006) 4 SCC 1, the Hon'ble Supreme Court has been pleased to examine the matter in details, regarding regularisation of temporary, contractual, casual, daily wage or ad-hoc employees and it was held :

"merely because an employee had continued under cover of an order of the Court, under "litigious employment" or had been continued beyond the term of his appointment by the State or its instrumentalities, he would not be entitled to any right to be absorbed or made permanent in service, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules—It is further not open to the court to prevent regular recruitment at the instance of such employees—Unsustainability of claim to permanence on basis of long continuance in irregular or illegal public employment."

\* \* \* \* \*

"Union and State Government and their instrumentalities directed to set in motion the process for regular recruitment in cases where temporary or daily-wagers were employed against vacant sanctioned posts, within six months of the date of



this judgment. Further, cases of irregular appointments (not illegal appointment) of duly qualified persons in duly sanctioned vacant posts, who had continued to work for ten year or more, but without the intervention of orders of courts or tribunals, may have to be considered for regularisation on merits in light of the principles laid down in this case, as a one-time measure, within six months of the date of this judgment" \* \* \* \* \*

\* \* \* "Equality of opportunity is the hallmark, and the Constitution has provided also for affirmative action to ensure that unequals are not treated as equals. Thus, any public employment has to be in terms of the constitutional scheme, Central and State Governments have made Acts, rules and regulations for implementing the guarantees provided under Arts. 14, 16, 309, 315, 320 and 335 and any recruitment to service in the Union, States or their instrumentalities is governed by such Acts, rules and regulations. Due to the mandate of Art. 309 the entire process of recruitment for services is controlled by detailed procedures which specify necessary qualifications, mode of appointment, etc."

The Hon'ble Supreme Court also observed that "it is necessary to keep in mind the distinction between regularisation and conferment of permanence in service jurisprudence. The words "regular" or "regularisation" do not connote permanence and can not be construed so as to convey an idea of the nature of tenure of appointment; they are terms calculated to condone any procedural irregularities and are meant to cure only such defects as are attributable to methodology followed in making the appointments."

Subsequently the Hon'ble Apex Court in U.P. State Electricity Board -vrs-Pooran Chandra Pandey and Ors reported in (2007) 11 SCC 92 held that "Earlier, the Electricity Board had taken decision to regularize the services of its employees working on daily wage basis from before 4-5-1990 on the existing vacant posts, the petitioner also claiming regularisation on the ground that they are working in the Society from before 4-5-1990 and their services stood transferred to the Electricity Board, the benefit can not be ignored and hence, regularisation is justified on the basis of Article 14 when they have put long period of service (about 22 years)".

9. In the instant case the Union has been able to establish that they were appointed by the Management of NERAMAC as per the offer for appointment of the casual employees was made by the Management and the witnesses concerned have categorically mentioned that their selection test was held and appointment letters were also issued to them vide Exhibit-14, Exhibit-15, Exhibit-16, Exhibit-17, Exhibit-18, Exhibit-19 to Exhibit-27, Exhibit-29

and Exhibit-30. Exhibit-6 (admitted by the management) and that the sanctioned strength of NERAMAC is 272 against which only 42 employees are working at present as it is proved *vide* Exhibit-6 on admission by the Management, which establishes the fact that against strength of sanctioned posts of 272 of NERAMAC the regular appointees are 42. Thus it is crystal clear that although the Union failed to produce the advertisement for appointment to the post of the said casual employees made by the NERAMAC and the appointment letter in respect of the all the casual employees, for argument sake if it is accepted that the appointment of the present workmen was made without following the regular process and according to the law, rules and regulation it cannot be said legal but the facts & circumstances as mentioned above made it very clear that the appointment is irregular. Such irregularities are curable in view of the ratio of the Umadevi (3) case. It is also found that the sanctioned strength of the NERAMAC is 272 and altogether 42 regular employees are working. Thus there is vacant sanctioned posts of 230 are lying.

The Hon'ble Apex Court in State of Karnataka and Ors.-vrs-M.L. Kesari and Ors. reported in (2010) 9 SC 247 decided that **"only irregular appointees are entitled to regularisation in terms of para 53 of Umadevi (3) case"**. The evidence on records shows that the present workers have been working in NERMAC since long period of more than 22 years as Typist, Electrician, Accounts Assistants, Grade-IV employees, Attendants, Security personnel, Porter etc. and some of them have been promoted to Store Keeper, Accountants etc. It is also found that they are rendering their services without any interruption, and that some of the casual employees were regularized. It is also found that those casual employees are doing the job of perennial nature at par with the regular employees of the NERAMAC. As such it is clear that the casual employees are not working to meet the urgency, seasonal, exigency & in need but continuously for such a long period as regular employees.

10. In view of my above discussion & having regard to the ratio of the Umadevi (3) Case & the State of Karnataka & other-vrs- M.L. Kesari as mentioned above it can safely be held that the appointment of workmen involved in this reference is irregular & they have been discharging similar nature of duties those performing by the regular employees, and they are working against the vacant sanctioned posts. Accordingly the question Nos. 1, 2 & 3 as aforesaid are answered.

The plea of the Management that the present 25 casual employees could not be regularized due to financial crunch of the NERAMAC and in support of their contention the management has proved the profit and loss account/balance sheet of the NERAMAC for the period 2005-2006 to 2012-13 which was prepared by NERAMAC through private Auditor. But it is found well established that the MERAMAC was established by the Central Government



and provided subsidies to the said Organisation and the Management has not been able to show the quantum of subsidies they received. Further the balance sheet of NERAMAC for the period 2005-06 to 2012-13 *vide* Exhibit-7 to Exhibit-13 while they have not been able to apprise the Court as to the financial position of their organization for the periods prior to 2005-06 during which the claim for regularisation was raised by the aforesaid 25 casual employees. The documents marked as Exhibit-7 to 13 (balance sheets) shows that the same were prepared on the same date on 21.6.2013 as such, the allegation raised by the union in course of cross-examination of the Management Witness No. 1 that the said balance sheets were prepared by the management in collusion with a private Auditor for which several objections had been raised by the CAG, can not be ruled out. On perusal of the recommendation of Mr. L. Rahman Committee (Exhibit-1) it appears that the said in House Committee recommended that all the employees working on daily wage basis prior to 2000 may be regularized and the service of others, if any, joined after 2000 may be disposed with immediate effect and no workers be engaged on casual basis for duration of more than 90 days. The documents marked as Exhibit-2 (proved on admission) containing Note Sheet Page (NSP)-61 NSP-65 shows that the recommendation of Mr. L. Rahman Committee was placed before the Executive Director and the same was routed through the Manager (P & A), GM (P & A), Board of Directors and the M.D. and it was decided by the Management of NERAMAC to consider regularisation of the workers/employees who have completed 4 years service. But after accepting the recommendation of the said Mr. L. Rahman Committee as well as accepting the recommendation of the said Committee by the Board of Directors including the M.D. in the Month of April, 2004, the Management of NERAMAC has not regularized the said employees till date. The said internal documents (Exhibit-2) shows that the management has examined the financial involvement in regularizing the said casual employees, in details and there is nothing to show on record that at the time of arriving at the decision of the Board of Directors including the M.D. that the NERAMAC was running in loss and it was not in a position to bear the financial involvement consequent upon the proposed regularisation, as such, the stand of the management that due to financial stringency the aforesaid casual employees who had been rendering the services to the NERAMAC spending their prime time of their life span of more than 20 years can not be accepted. Therefore, I find, no ground to entertain the argument of the learned Advocate for the Management that the Management has been running a loss which accumulated to Rs. 4.81 crores during the period from 2003 to 2007.

The testimony on record shows that prior to reference to the BIFR the NERAMAC never declared any closure or lay off even after that there was no occasion to lay off or

closure. It is also found evident that the casual employees namely Shyamal Ch. Dey was regularized in the year 2002 to the Post of Junior Assistant and after reference to the BIFR altogether 18 numbers of employees were regularized from 1987 to 1996. The report of the L. Rahman Committee shows that the said Committee at the time of preparing the report has gone through some of the resent judgments pronounced by various Courts including Hon'ble Supreme Court on the matter of regularisation of Casual Employees. In this connection I am inclined to refer the case of Ajmer Vidyut Vitran Nigam and Qrs. — vrs — Navin Kumar Saini published in (2010) 15 SCC 17 wherein it was observed that:

"However, services of other similarly placed workmen who were junior to respondents regularized as Junior Clerks *w.e.f.* 1-4-1982 and given regular pay scale but cases of respondents not considered on the ground that they had already been appointed as LDCs— Held, cases of respondents ought to have been considered for regularisation as LDC as cases of other persons similarly situated were considered by Selection Committee — Therefore, appellants directed to consider cases of respondents for regularisation as Junior Clerks with effect from 1.4.1982 and in case they were found fit therefore, grant them pay scale thereof from said date."

11. The record shows that some of the casual employees have been working since 1987 and they are continuing their duties uninterruptedly, without any break and are entrusted with some perennial nature of works such as, Clerical, Account keeping, Stores Management, electrical works, typing, A/C operation, messenger, attendant duty such as, Peon, Chowkidar, Porter, etc. and in spite of their due dedication in discharging the duties for such a long period of about 20 years, as the case of other similarly situated persons *i.e.* the regularized employees. Therefore, it is crystal clear that the services of the aforementioned 25 casual employees in the NERAMAC can not be ignored and as such, their claim for regularisation is found to be reasonable and justified as per provision of Article-14 of the Constitution of India as well as the principle of Natural Justice.

In view of my above discussion and having regard to the ratio of the cases as well as the findings arrived at as above, it can safely be held that the plea of the management that the financial position of NERAMAC does not permit to regularize of the said 25 casual employees is not maintainable. Therefore, the question No. - iv, as mentioned above, is decided in negative against the Management.

In the result, I am constrained to hold that the action of the Management of NERAMAC by not regularizing the services of the 25 Casual/Contingent Employees who are contesting the reference (as mentioned in the claim statement submitted by the Union) or not granting equal

pay for equal works at par to the regular employees instantly are not legal and justified. Accordingly, the said 25 casual/contingent workers are entitled to regularisation with financial benefits with effect from 23.4.2004 the date on which the M.D. has accepted the recommendation of Mr. L. Rahman Committee. This reference is disposed of on contest without any cost.

Send the Award to the Ministry as per procedure.

Given under my hand and seal of this Court on this 1st day of April, 2015, at Guwahati.

L.C. DEY, Presiding Officer

नई दिल्ली, 15 अप्रैल, 2015

**का.आ. 776.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार महाप्रबंधक दूरसंचार ग्वालियर के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय जबलपुर के पंचाट (संदर्भ संख्या Case No. CGIT/LC/R/42/03) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13/04/2015 को प्राप्त हुआ था।

[सं. एल - 40012/231/2002-आई आर (डीयू)]

पी० के० वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 15th April, 2015

**S.O. 776.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. CGIT/LC/R/42/03) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur now as shown in the Annexure in the industrial dispute between the employers in relation to the management of the General Manager, Telecom, Gwalior and their workman, which was received by the Central Government on 13/04/2015.

[No. L-40012/231/2002-IR(DU)]

P. K. VENUGOPAL, Desk Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

**NO. CGIT/LC/R/42/2003**

Shri Mohan Kushwah,  
S/o Shri Jalim Singh Kushwah,  
R/o Goshpura No. 2 Talaiya,  
Nr. Man Mandir Talkies,  
Gwalior.

...Workman

#### Versus

General Manager,  
Telecom, O/o GMTD,

Jayendraganj, Lashkar,  
Gwalior.

...Management

#### AWARD

Passed on this 20th day of March 2015

1. As per letter dated 25-2-05 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section - 10 of I.D. Act, 1947 as per Notification No. L-40012/231/2002-IR(DU). The dispute under reference relates to:

"Whether the action of the management of General Manager, Telecom, Gwalior in terminating the services of Shri Mohan Singh Kushwah *w.e.f.* 8-2-96 is justified? If not, to what relief the workman is entitled for?"

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at Page 2/1 to 2/3. Case of workman is that he was appointed as Driver by IInd party from 23-8-91. However appointment order was not given to him. His services were terminated from 7-2-96. Termination order was not issued. That he was continuously working from 23-8-91 to 6-2-96. His service record was satisfactory. His services were discontinued without assigning reasons. The dispute between parties is covered by provisions of ID Act 1947. That his services were terminated without notice, he was not paid retrenchment compensation. Provisions of Section 25-F, G of ID Act violated by IInd party. Permission of appropriate Government was not taken for terminating his services. It amounts to illegal retrenchment. Notice was not issued before terminating services. Action of management is by way of victimization. On such grounds, workman is praying for his reinstatement with back wages.

3. IInd party filed Written Statement at Page 9/1 to 9/3 opposing claim of workman. Preliminary objection is raised that reference is not tenable as workman had filed petition before CAT on same ground. The order passed by CAT in CCP 62/01 was rejected. Provisions of ID Act are not applicable as IInd party is Government undertaking is not an Industry. IInd party denied workman was appointed as Driver. It is reiterated that workman did not work under IInd party. Provisions of ID Act are not applicable to it. There is no question of complying provision of Section 25-F, G of ID Act as those provisions are not applicable to IInd party. On such ground, IInd party prays for rejection of claim.

4. Ist party workman filed rejoinder at Page 10/1 to 10/3 reiterating his contentions in statement of claim. IInd party filed rejoinder at Page 13/1 to 13/2 reiterating its contentions in Written Statement.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

- |  |  |
|--|--|
| (i) Whether the action of the management of General Manager, Telecom, Gwalior in terminating the services of Shri Mohan Singh Kushwah <i>w.e.f.</i> 8-2-96 is justified? | In Affirmative                         |
| (ii) If not, what relief the workman is entitled to?"  | Workman is not entitled to any relief. |

### REASONS

6. Workman challenged termination from service for violation of Section 25-F, G of ID Act. He was not issued notice, retrenchment compensation was not paid to him.

7. Workman filed affidavit of his evidence supporting is contentions in Statement of claim. However workman failed to appear for his cross-examination. Therefore evidence of workman cannot be considered deciding the matter.

8. IInd party filed affidavit of his witness Shri S.K. Sharma. Management's witness stated in his affidavit that workman was never employed on daily wages. No work order was issued in his name. The contempt petition CCP 62/2001 was decided against workman. IInd party is Government undertaking is not covered as an Industry. That workman did not work continuously for 240 days in any calendar year. Management's witness cross-examined at length. The witness of management says he is working in deptt. from 1985. Presently he is working on the post since 3 months to the management's witness decided to identify signature on document P-2. He denied that workman was appointed since 30-8-91. He admits to know the entries in log book. The officer used to sign last column of log book. Regular driver used to sign it. Witness shown his inability to produce rules in that regard. He claims ignorance whether matador MP04 ES20 was driven by workman. He denied that workman was driver matador from 23-8-91 to 23-2-96. The suggestion is denied that deliberately log book is not produced by management. When workman failed to appear for his cross-examination, his evidence could not be accepted for deciding the matter. Management's witness has denied suggestions w.t. the log book or workman was driving Matador owned by department. The workman has failed to adduce cogent evidence about his continuous work more than 240 days therefore workman cannot be extended protection under Section 25-H.G. of ID Act.

9. The counsel for IInd party Shri R.S. Khare has relied on citation in 2014(1) SCC 536, 2013, 2014(III)MPWN103, 2013-II SCC L&S 369. I am not inclined to discuss ratio held

in all those cases in details as workman has failed to prove that he worked continuously more than 240 days during any of the calendar year. For back of evidence on part of workman, I record my findings in Point No. 1 in Affirmative.

10. In the result, award is passed as under:—

- (1) The action of the management of General Manager, Telecom, Gwalior in terminating the services of Shri Mohan Singh Kushwah *w.e.f.* 8-2-96 is legal and proper.
- (2) Workman is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 15 अप्रैल, 2015

**का.आ. 777.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार महाप्रबंधक सुरक्षा पेपर मिल होशंगाबाद के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय जबलपुर के पंचाट (संदर्भ संख्या Case No. CGIT/LC/R/162/95) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13/04/2015 को प्राप्त हुआ था।

[सं० एल-16011/03/94-आईआर (डीयू)]

पी० के० वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 15th April, 2015

**S.O. 777.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. Case No. CGIT/LC/R/162/95) of the Central Government Industrial Tribunal Cum Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the General Manager, Security Paper Mill, Hoshangabad and their workmen, which was received by the Central Government on 13/04/2015.

[No. L-16011/03/94-IR(DU)]

P. K. VENUGOPAL, Desk Officer

### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/162/95

The President,  
S.P. Mazdoor Sangh,  
Hoshangabad

...Workmen/Union

**Versus**

General Manager,  
Security Paper Mill,  
Hoshangabad

...Management

**AWARD**

Passed on this 13th day of March 2015

1. As per letter dated 4-9-95 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No.L-16011/3/94-IR(DU). The dispute under reference relates to:

"Whether the action of the management of Security Paper Mill, Hoshangabad in transferring the applicants named as per list attached from the Machine House of Production Deptt. to other departments *w.e.f.* 16-11-92 and depriving them of the benefits as per the NPC report *w.e.f.* 21-10-92 is justified or not? To what relief, the workmen are entitled to?"

2. After receiving reference, notice were issued to the parties. Ist party Union filed statement of claim on behalf of 10 workmen. The case of Union is that notice dated 29-6-83 was issued inviting application for filling post of machine operator Grade III on transfer from other sections. It was mentioned in said notice that persons who joined as machine Assistant Grade III in the production department on transfer in pursuance to the aforesaid notice will stand junior to the existing employees. In pursuance of said notice, 10 employees related to the dispute submitted application. They were appointed as Machine Assistant Grade III in Revised Pay Scale 250-350 in production department in machine House Section. They were appointed in 1983 as Attendant Grade III. They were designated as Bobinmen for 9 years. They were not deployed for any other work. Earlier the pay scale of Bobinman was Rs. 210-290. After IBCON study report, the pay was revised to Rs. 250-350. They were excessively performing duty of Bobinman in Machine House Section. Government appointed NPC job study team. The pay scale of Rs. 1320-2040 as they were working as Bobinman. That they were transferred to other sections to deny said pay scale. Other persons without having experience of work of Bobinman were transferred under the guise of common seniority. That on implementation of NPC report the grade of Bobinmen was revised from 950-1400 to 1320-2040 from 21-10-92.

3. IInd party filed Written Statement at Page 6/1 to 6/2 opposing claim of Ist party union. It is submitted that SPM was commissioned in 1967 with co collaboration with M/S Portals Ltd., United Kingdom. The Mill produces Security papers for printing currency and Bank Notes has in its organization Group-A,B,F,D employees Classified B and unclassified industrial workers working in the Mill. NPC recommendations were approved by Government and implemented from 21-10-92 after Tripartite Agreement was signed. It is reiterated that there is no post of Bobinman claimed by workman. Some skilled person were designated

as machine attendant Grade III in Pay Scale Rs. 950-1400 were posted in machine house in production department. Their work was related to operation of insertion of security thread from bobbin in the paper is undertaken. On recommendation of NPC recommendations, considering common seniority of employees working in various sections. The common seniority was result of Implementation of Mehta Committee Recommendation *w.e.f.* 1-3-89 as per demand for majority Union. After NPC recommendations, new openings arose due to upgradation of sanction of various cadres. The persons who were juniors in pay Scale 950-1400 were upgraded in Pay Scale 1200-1800. It is reiterated that workman related to dispute were granted Rs. 1200-1800 revising Pay Scale 950-1400. They are not deprived in benefits as per recommendations of NPC.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of Security Paper Mill, Hoshangabad in transferring the applicants named as per list attached from the Machine House of Production Deptt. to other departments *w.e.f.* 16-11-92 and depriving them of the benefits as per the NPC report *w.e.f.* 21-10-92 is justified or not? 10 employees related to the dispute are illegally denied pay scale of Rs. 1320-2040 as per recommendation of NPC.

(ii) If not, what relief the workman is entitled to? As per final order.

**REASONS**

5. Union raised dispute alleging workman related to dispute are illegally transferred to deny the benefit of NPC recommendations. The affidavit of evidence in support of claim of Ist party is filed by Shri Mithulal Raikwar & Shri M.S. Lohar supporting contentions in statement of claim. As per ordersheet dated 11-6-08, management's right to cross-examine said witness is closed. Thus evidence of witness of Ist party remained unchallenged.

6. Management filed affidavit of witness Shri S. Mahapatra supporting contentions of IInd party in Written Statement. That some employees junior in pay scale Rs. 950-1400 were allowed pay scale of Rs. 1200-1800 from 21-10-92. Management's witness in his cross-examination says that he was working in Security Paper Mill in September 2002. He has no personal knowledge of the matter in the case. He was not concerned in submission of NPC report, Tripartite Agreement. Those employees were



transferred on the basis of NPC report and settlement. He claims ignorance about procedure of entering into the settlement. The employees related to dispute were Operator Grade III appointment letter was not given to them. As per record, he says that they were working as Operator Grade III. He had not seen their service book. The witness was unable to tell whether they were working in Machine House. He admits that all of those workers were working for 9 years in machines section. There is no noting about their transfer. Management's witness further says there is no post of Bobinmen. That those employees were transferred on their application. In next breath, he says that he has not seen application. He claims ignorance about transfer of those employees. Those workmen were not included in pay scale 1320-2040. The evidence of management's witness is not cogent. He has no personal knowledge.

7. During course of argument, counsel for IInd party Shri Anand Nayak pointed my attention to document Annexure NA-1 i.e. Tripartite Agreement dated 21-10-92 which relates to grant of incentives and the conditions required to be considered. Annexure NA-2 is copy of common seniority. NA-3 is copy of order dated 26-10-92 revising pay scale on recommendations of NPC. The pay scale of machine attendant is 950-1400. 3 post were allowed in pay scale Rs. 1320-2040, in same scale of 950-1400. 36 posts were given revised scale of 1200-1800. The report of NPC Recommendation is not produced by IInd party. There is no dispute of discriminating workman working as Machine Assistant Cat-III in pay scale 950-1400 revising pay scale Rs. 1200-1800 allowing only 3 machine attendant in pay scale 1320-2040. Discrimination made in NA-3 is clearly illegal and therefore I record my finding in Point No. 1 in Negative.

8. In the result, award is passed as under:—

- (1) The action of the management of Security Paper Mill, Hoshanabad in transferring the applicants named as per list attached from the Machine House of Production Deptt. to other departments w.e.f. 16-11-92 and depriving them of the benefits as per the NPC report w.e.f. 21-10-92 is not legal.
- (2) IInd party is directed to give benefit of Revised Pay Scale of Rs. 1320-2040 as per NPC recommendations to the workers as per list annexed with reference order.
- (3) IInd party is directed to pay arrears to those workmen within 30 days from the date of publication of award. In case of default, amount shall carry 9% interest per annum from the date of award till its realization.

R.B. PATLE, Presiding Officer

नई दिल्ली, 10 अप्रैल, 2015

**का.आ. 778.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बीसीसीएल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं० 2, धनबाद के पंचाट (संदर्भ संख्या 86/04) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10/04/2015 को प्राप्त हुआ था।

[सं एल-20012/38/2004-आईआर (सी-1)]

एम० के० सिंह, अनुभाग अधिकारी

New Delhi, the 10th April, 2015

**S.O. 778.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 86/04) of the Cent. Govt. Indus. Tribunal-Cum-Labour-Court No. 2, Dhanbad as shown in the Annexure, in the Industrial Dispute between the management of M/s. BCCL and their workmen, received by the Central Government on 10/04/2015.

[No. L-20012/38/2004-IR(C-I)]

M.K. SINGH, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2), DHANBAD

#### PRESNET:

Shri Kishori Ram,

Presiding Officer.

In the matter of an Industrial Dispute under  
Section 10(1)(d) of the I.D. Act., 1947.

#### REFERENCE NO. 86 OF 2004

#### PARTIES

: The General Secretary

Jharkhand Janta Mazdoor Union,  
Qr. No. 1A, 373, PO: Koyla

Nagar, Distt; Dhanbad.

Vs. The General Manager,

Pootki Balihari Colliery of M/s. BCCL,  
PO: Kusunda, Dhanbad

Order No. L-20012/38/2004-IR(C-I)  
DT. 28.06.2004.

#### APPEARANCES:

On behalf of the workman/Union : Mr. N.M. Kumar  
Ld. Advocate

On behalf of the Management : Mr. U.N. Lal  
Ld. Advocate

State : Jharkhand

Industry : Coal

Dated, Dhanbad, the 12th Feb., 2015

### AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act., 1947 has referred the following dispute to this Tribunal for adjudication *vide* their Order No. L-20012/38/2004-IR(C-I) DT. 28.06.2004.

### SCHEDULE

"Whether the demand of the Jharkhand Janta Mazdoor Union from the Management of M/s. BCCL for promoting and regularizing S/Shri Prakash Chandra Mehta, Manoj Kumar Paswan, Balram Mahato as Sub-section Attendant Cat. IV *w.e.f.* 15.11.1994 is justified? If so, to what relief are the concerned workmen entitled?"

On receipt of the Order No. L-20012/38/2004-IR(C-I) DT. 28.06.2004 of the above mentioned reference from the Government of India, Ministry of Labour & Employment, New Delhi for adjudication of the dispute, the Reference Case No. 86 of 2004 was registered on 19.07.2004 and accordingly an order to that effect was passed to issue notice through the Registered Posts to the parties concerned, directing them to appear in the Court on the date fixed, and to file their written statements along with the relevant documents. In pursuance of the said order, notices by the Registered Posts were sent to the parties concerned.

Both the parties made their appearances and filed their pleadings and photocopies of their documents. The Union and the O.P./Management through their own respective Ld. Counsels appeared in, and contested the case.

2. The case of sponsoring Jharkhand Janta Mazdoor Union for workmen S/Shri Prakash Chandra Mehta, Manoj Kumar Paswan and Balram Mahato is that S/Shri Prakash Chandra Mehta, Manoj Kumar Paswan and Balram Mahato had got their appointment as M/Loader on 09.05.1983, General Mazdoor Cat. I in Balihari Colliery and as Switch Board Attendant in South Balihari Colliery on 02.07.1990 respectively. The Management had engaged them from 11.05.1994 to work as a Switch Board attendant Cat. II in the Cadre Scheme as per the NCWA which provides for the designation as Sub Station Attendants/Switch Board Attendant. These workmen had continuously rendered their services from 15.11.1994 accordingly by dealing with 11,000 Volts as in Cat. IV in spite of it, the workmen were illegally and arbitrarily given their wages of Cat. III. It is alleged that when a workman of Cat. III is posted at Main Switch of a Sub Division, his designation is changed as Sub Station Attendant, but not as a Switch Board Attendant. Thus the workmen are entitled to their regularization in Cat. IV *w.e.f.* 11.05.1994 and accordingly to their upgradation in Cat. V. The workmen have been working against the aforesaid

posts still vacant for many years to the satisfaction of the Management, so there is no need of the DPC for their regularization. The action of the Management is alleged to be entirely illegal, arbitrary and malafide. As such the demand of the workman is justified.

3. Whereas the contral pleaded case of the OP/Management that the claim of the workmen for promotions/regularizations not a subject-matter of Industrial Dispute as the promotion is allowed as per the Cadre Scheme formulated by JBCCI on the basis of the vacancies available as per the sanctioned strength of the manpower. These workmen were asked to work of electrical job against very temporary vacancies due to Leave/Sick vacancies. They were regularized subsequently to the post of Switch Board Attendant in Cat. I *w.e.f.* 21.11.98, 24.12.1996 and 21.11.1998 respectively. They were also paid their wages of Cat. III rightly since then. But so far as the Cat IV is concerned, employees must possess the Wiremanship Statutory Certificate for their eligibility for the selection/recommendation by the Department Promotion Committee (DPC) of the Trade Test etc. These workmen have no grounds/merits for their claim for Cat. IV in this case, as they are handling the job of eleven thousand Volts Switch. As such the demand of the Union concerned as represented before the ALC @, Dhanbad for their promotion/regularization is unjustified and unreasonable. Thus they are not entitled to any relief in the matter.

The OP/Management in their written simultaneous rejoinder has categorically denied the allegations of the workmen as incorrect and baseless.

### FINDING WITH REASONS

4. In the instant reference case, WWI Prakash Chandra Mehta, one of the workmen for the Union and MWI Rakesh Kumar Kar, the Personnel Officer, P.B. Area of BCCL; Dhanbad for the OP/Management have been examined respectively.

On perusal of the pleadings and evidences of both the parties it appears to be no dispute that one workman Prakash Ch. Mehta (P. C. Mehta) as per the office order dt. 3.5.1995 (Ex. W.1) was deputed to work as the surface Sub Station Attendant at 10/12 Pit in place of Shri A. Sarkar since retired. Likewise it is beyond a controversy that other workman Manoj Kumar Paswan, the General Mazdoor on the recommendation of Supdt./Manager, 10/12 Pits as per officer order dt. 24.12.1996 (Ex. W.1) was regularized as Attendant in Cat. III with immediate effect. Aforesaid Prakash Chandra Mehta and other co-worker Balram Mehta were regularized as Switch Board Attendant *w.e.f.* 21.11.1998, and accordingly they got their wages since then, the aforesaid P.C. Mehta had got SLU in the year 2005-06 perhaps, and got his retirement on 1st June 2011, though he had the payment of wages for Cat. IV.

The argument on behalf of three workmen is that workmen P.C. Mehta, Manoj Kumar Paswan and Balram Mahto as per the office orders dt. 3.5.1994, 24.12.1996 and 28.06.1992 have been respectively working as the Sub-Station Attendant, so they are legally entitled to their regularization accordingly with the wages in Category IV as also admitted by the Management in regard to Balram Mahto and M.K. Paswan as Sub Station Addendant, In response to it, the contention of Mr. U.N. Lal, Ld. Counsel for the OP/Management is that according to the statement of MWI Rajesh Kumar Kar, the Personnel Officer, out of the three workmen, Shri Prakash Chandra Mehta is now retired as the Sub Station Attendant Cat. III on 31.05.2011, Shri Manoj Kumar Paswan has been promoted through the DPC to the post of the Switch Board Attendant Category IV *w.e.f.* Oct., 2008, but Shri Balram Mahto was given his SLU *w.e.f.* 01.01.2007 after completion of his service for eight years under Category III he had come *w.e.f.* 21.11.1998 (but *w.e.f.* 09.10.1998 as per the Extt. M 3 and 4, the Project Officer's statement before the ALC©, Dhanbad, and the Seniority List of the S.B. Attendant respectively). Mr. Lal, the Learned Counsel for the OP/Management further submits that though the Sub-Station Attendant Cat. III and IV are the same post under the Cadre Scheme (Ext. M.2) according to which the Cat. IV presupposes the workmen's entry into Cat. I as General Mazdoor, then into Cat III with the Matriculation/its equivalent qualification, and the wireman's permit (H.T./L.T) having completion of fours years as the General Mazdoor against the sanctioned vacancies, so the claim of the Union for promotion/regularization of these workmen as Sub-Station Attendant Cat. IV *w.e.f.* 15.11.1995 is unjustified and baseless.

In view of the aforesaid existing facts, I find that the Op/Management appears to be right in observing the Cadre Scheme in regard to the due regularization/promotion of Sri Manoj Kumar Paswan at due time, but not in respect of to the due regularization/promotion of Sri Manoj Kumar Paswan at due time, but not in respect of other two workmen Prakash Chandra Mehta and Balram Mahato being not qualified for ity as per the Cadre Scheme, though Sri Balram Mahato has got his S.L.U. for it.

In result, it is, hereby, awarded that the demand of the Jharkhand Janta Madoor union from the Management of M/s. BCCL for promoting and regularizing S/Shri Prakash Chandra Mehta, Manoj Kumar Paswan, and Balram Mahato as Sub-Station Attendant in Cat. IV *w.e.f.* 15.11.1994 is not justified and baseless Hence, the workmen are not entitled for any relief as claimed.

KISHORI RAM, Presiding Officer

नई दिल्ली, 10 अप्रैल, 2015

**का.आ. 779.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बीसीसीएल के

प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायलय, नं० 1, धनबाद के पंचाट (संदर्भ संख्या 44/13) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10/04/2015 को प्राप्त हुआ था।

[सं० एल-20012/51/2013-आईआर(सीएम-1)]

एम० के० सिंह, अनुभाग अधिकारी

New Delhi, the 10th April, 2015

**S.O. 779.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 44/13) of the Central. Government Industrial Tribunal-cum-Labour Court, No. 1, Dhanbad as shown in the Annexure in the Industrial Dispute between the management of M/s. BCCL and their workman, received by the Central Government on 10/4/2015.

[No. L-20012/51/2013-IR(CM-I)]

M.K. SINGH, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 1), DHANBAD

In the matter of reference U/S 10 (1) (d) (2A) of I.D. Act., 1947.

#### Reference: No. 44/13

Employer in relation to the management of North Tisra Colliery M/s. BCCL and

Their workmen.

**Present:** Shri R.K. Saran  
Presiding Officer.

#### Appearances:

For the Employers Sri U.N. Lall, Advocate

For the workman :- Shri S.C. Gour Adv.

State: Jharkhand Industry-Coal

Dated 19/12/2015

#### AWARD

By order No. L-20012/51/2013 IR (CM-I) dated 23.09.2013, the central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

#### SCHEDULE

"Whether the action of the management of North Tisra Colliery of M/s. BCCL in anomaly in fixation of tramming rate of Trammers in fair and justified? to what relief the concerned workers are entitled?"

2. This case of received from the Ministry on 09/02/1992. During the pendency of the case, The representative of workman is not interested to contest the case. It is felt that the dispute between parties is resolved. Hence "No dispute" award is passed. communicate.

R.K. SARAN, Presiding Officer

नई दिल्ली, 10 अप्रैल, 2015

**का.आ. 780.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बीसीसीएल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नं० 1, धनबाद के पंचाट (संदर्भ संख्या 45/08) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10/04/2015 को प्राप्त हुआ था।

[सं० एल-20012/77/2008-आईआर(सीएम-1)]

एम० के० सिंह, अनुभाग अधिकारी

New Delhi, the 10th April, 2015

**S.O. 780.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 45/08) of the Central Government Industrial Tribunal-cum-Labour Court, No. 1, Dhanbad as shown in the Annexure in the Industrial Dispute between the management of M/s. BCCL and their workmen, received by the Central Government on 10/4/2015.

[No. L-20012/77/2008-IR(CM-I)]

M.K. SINGH, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of reference U/S 10 (1) (d) (2A) of I.D.  
Act, 1947

#### Ref. No. 45 of 2008

Employer in relation to the management of Jairampur  
Colliery M/s. BCCL

AND

Their Workmen

**Present:-** Sri Ranjan Kumar Saran,  
Presiding Officer.

#### Appearances:

For the Employers : Sri. D.K. Verma, Advocate

For the workman : Sri S.C. Gour, Rep.

State : Jharkhand

Industry : Coal

Dated 20/2/2015

#### AWARD

By Order No. L-20012/77/2008-IR (CM-I), dated 30/09/2008, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this tribunal.

#### SCHEDULE

"Whether the action of the management of Jairampur Colliery of M/s. BCCL in not removing the anomaly in fixation of pay of Shri Habulal Das, Haulage Operator is justified and legal? To what relief is the concerned workman entitled?

2. This Case is received from the Ministry of Labour & Employment on 10.10.2008. After receipt of reference, both parties are noticed. The Sponsoring Union files their written statement on 27.01.2009. The management files their written statement on 16.04.2010. One witness examined on behalf of the workman. And two document marked as W-1 and W-2.

3. The workman has claimed that his pay though has been fixed, there are anomalies, in various stage of fixation. From the written statement and rejoinder it appears, there may be anomalies.

4. This Tribunal unable to know the entire facts unless the seniority list as well as there scale of pay is produced here.

5. Therefore the only direction given to the management to clear the anomalies amongst the workmen after strict observance of standardization committee and implementation instruction No. 42 dated. 19.3.1985.

This is my award.

R. K. SARAN, Presiding Officer

नई दिल्ली, 10 अप्रैल, 2015

**का.आ. 781.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ई०सी०एल० के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नं० 1, धनबाद के पंचाट (संदर्भ संख्या 38/93) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10/04/2015 को प्राप्त हुआ था।

[सं० एल-20012/310/1991-आईआर (सी-1)]

एम० के० सिंह, अनुभाग अधिकारी

New Delhi, the 10th April, 2015

**S.O. 781.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government



hereby publishes the Award Ref. No. 38/93 of the Cent. Govt. Indus. Tribunal-cum-Labour, Court No. 1 Dhanbad as shown in the Annexure, in the industrial dispute between the management of M/s. ECL and their workmen, received by the Central Government on 10/04/2015.

[No. L-20012/310/1991-IR(C-I)]

M. K. SINGH, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of reference U/S 10 (1) (d) (2A) of  
I.D. Act, 1947

#### Ref. No. 38/93

Employer in relation to the management of Mandman  
Colliery M/s E.C.L.

AND

Their Workmen

**Present:-** Sri R. K. Saran, Presiding Officer

#### Appearances:

For the Employers : Sri. D.K. Verma, Advocate

For the workman : Sri D. Mukherjee

State : Jharkhand Industry : Coal

Dated 18/2/2015

#### AWARD

By Order No. L-20012/310/1991-IR (C-I), dated 04/01/1993, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this tribunal.

#### SCHEDULE

"Whether the demand of Bihar Colliery Kamgar Union for regularization of Shri Arun Kumar Bishwakarma and six others a Black smithes by the management of M/s. Eastern Coalfields Ltd. Kapasara Area in relation to their Mandaman colliery is justified? If yes, what relief the concerned workmen are entitled?"

**Note:—** List of workmen is not enclosed with order of reference.

2. This case is received from the Ministry on 09/02/1992. During the pendency of the case. The representative of workman submits that workman is not interested to contest the case. It is felt that the dispute between parties is resolved. Hence "No dispute" award is passed. communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 10 अप्रैल, 2015

**का.आ. 782.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार टिस्को के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नं० 1, धनबाद के पंचाट (संदर्भ संख्या 43/93) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10/04/2015 को प्राप्त हुआ था।

[सं० एल-20012/270/1991-आईआर (सी-1)]

एम० के० सिंह, अनुभाग अधिकारी

New Delhi, the 10th April, 2015

**S.O. 782.**—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. No. 43/93 of the Cent. Govt. Indus. Tribunal-cum-Labour, Court No. 1, Dhanbad as shown in the Annexure, in the industrial dispute between the management of M/s. TISCO and their workmen, received by the Central Government on 10/04/2015.

[No. L-20012/270/1991-IR(C-I)]

M. K. SINGH, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of reference U/S 10 (1) (d) (2A) of  
I.D. Act, 1947

#### Ref. No. 43/1993

Employer in relation to the management of  
M/s. TISCO Ltd.

AND

Their Workmen

**Present:-** Sri R. K. Saran, Presiding Officer

#### Appearances:

For the Employers : Sri. D. K. Verma, Advocate

For the workman : Sri D. Mukherjee

State : Jharkhand Industry : Coal

Dated 17/2/2015

#### AWARD

By Order No. L-20012/270/1991-IR (C-1), dated 05/01/1993, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this tribunal:

**SCHEDULE**

"Whether the action of the management M/s TISCO Ltd. Jamdoba Distt. Dhanbad in denying the employment of Smt. Jhabu Mahatain W/o Late Govind Mahto, Ex-employee of Jamadoba colliery of M/s TISCO Ltd. As dependent is justified? If not, to what relief the workman are entitled?"

2. This case is received from the Ministry on 11/02/1993. During the pendency of the case. The representative of workman submits that workman is not interested to contest the case. It is felt that the dispute between parties is resolved. Hence "No dispute" award is passed. communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 10 अप्रैल, 2015

**का.आ. 783.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ईसीएल के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नं० 1, धनबाद के पंचाट (संदर्भ संख्या 51/92) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10.04.2015 को प्राप्त हुआ था।

[सं० एल-20012/257/1991-आईआर (सी-1)]

एम० के० सिंह, अनुभाग अधिकारी

New Delhi, the 10th April, 2015

**S.O. 783.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. No. 51/92 of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure, in the industrial dispute between the management of M/s. ECL and their workmen, received by the Central Government on 10.04.2015.

[No. L-20012/257/1991-IR (C-I)]

M. K. SINGH, Section Officer

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT  
INDUSTRIAL TRIBUNAL NO. 1, DHANBAD**

In the matter of reference U/s 10(1)(d)(2A) of I.D. Act, 1947

**Reference : No. 51/1992**

Employer in relation to the management of Kapasara  
Area of M/s ECL.

AND

Their workmen

**Present:** Sri R. K. Saran, Presiding Officer

**Appearances:**

For the Employers: None

For the workman: None

State: Jharkhand

Industrial : Coal

Dated 18.2.2015

**AWARD**

By order No. L-20012/257/1991 IR (C-1) dated 22.07.1992, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial disputes Act, 1947 referred the following dispute for adjudication of this Tribunal:

**SCHEDULE**

"Whether the action of the management, Kapasara Area of M/s Eastern Coalfields Ltd. In denying promotion to Shri Manohar Das, Special Grade clerk to the post of office superintendent in Technical and supervisory Gr. 'A' is justified? If not, what relief the workman is entitled?"

2. After receipt of the reference, both parties are noticed. But none appears on behalf of the workman inspite of regd. Notice. Case remain pending. It is felt that the disputes between the parties have been resolved in the meantime. Hence No Dispute Award is passed, Communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 1 अप्रैल, 2015

**का.आ. 784.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बीसीसीएल के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नं० 2, धनबाद के पंचाट (संदर्भ संख्या 28/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 01.04.2015 को प्राप्त हुआ था।

[सं० एल-20012/23/2008-आईआर (सीएम-1)]

एम० के० सिंह, अनुभाग अधिकारी

New Delhi, the 1st April, 2015

**S.O. 784.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. No. 28/2008 of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Dhanbad as shown in the Annexure, in the industrial dispute between the management of M/s. BCCL and their workmen, received by the Central Government on 01.04.2015.

[No. L-20012/23/2008-IR (CM-I)]

M.K. SINGH, Section Officer

**ANNEXURE****BEFORE THE CENTRAL GOVERNMENT  
INDUSTRIAL TRIBUNAL (NO. 2), AT DHANBAD****Present**

Shri Kishori Ram, Presiding Officer

In the matter of an Industrial Dispute under Section  
10(1)(d) of the I.D. Act., 1947.**Reference No. 28 of 2008**

**Parties** : The Secretary,  
Bahujan Mazdoor Union,  
Mines Rescue Station, PO: Dhanisar,  
Dhanbad  
Vs. General manager,  
C.V. Area of M/s BCCL, PO: Barakar,  
Burdwan-713301 (W.B.)

Ministry's Order No. L-20012/33/2008-IR(CM-1)  
dt. 28.04.2008

**Appearance:**

On behalf of the workman/Union: Mr. R. R. Ram,  
Ld. Advocate

On behalf of the Management : Mr. S.N. Ghosh,  
Ld. Advocate

State : Jharkhand

Industry : Coal

Dated, Dhanbad, the 19th Feb., 2015.

**AWARD**

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec. 10 (1) (d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication *vide* their Order No. L.20012/23/2008-IR (CM-I) dt. 28.04.2008.

**SCHEDULE**

"Whether the action of the Basantimata Colliery of M/s BCCL in not allowing Shri Satyanarayan Singh, UG M/Loader to join his duty in the Company *w.e.f.* 17.05.2006 is legal and justified? if not, to what relief is the concerned workman entitled?"

On receipt of the Order No. L-20012/33/2008-IR(CM-1) dt. 28.04.2008 the above mentioned reference from the Government of India, Ministry of Labour and Employment, New Delhi for adjudication of the dispute, the Reference Case No. 28 of 2008 was registered on 05.05.2008, and accordingly an order to that effect was passed to issue notices through the Registered Posts to the parties concerned, directing them to appear in the Court on the date fixed, and to file their written statements along with the relevant documents. In pursuance of the said order, notices by the Registered Posts were sent to the parties concerned.

Both the parties made their appearances and filed their pleadings and photocopies of their documents. The Union and the O.P./Management through their own respective Ld. Counsels appeared in, and contested the case.

2. The case of the workman Stayanarayan Singh as sponsored by the Bahujan Mazdoor Union is that he was a permanent workman as Ex. U/G M/Loader in Basantimata Colliery under C.V. Area of M/s. BCCL. He was always punctual to his duty. He was on sick leave from 16.05.2005. When he was declared fit for work on 17.05.2005, he reported for his duty and he accordingly joined his service. Unfortunately he again seriously fell ill. The Management referred him to the Central Hospital, Dhanbad, on 19.07.2005 on the same day. He was admitted on the Hospital and thereafter he was discharged from there on 13.12.2005. The authority concerned accepted the workman to be under the Medicare of the Company's Hospital from 21.07.2005 to 13.12.2005. Before his hospitalization in the Central Hospital in Dhanbad, he was under the treatment of Dr. J.K. Bhattacharya from 15.02.2005 at Matari Railway Station, Dhanbad. He was also medically examined on 13.06.2005 at his native locality at Giridih where his blood was checked at Sanjivini Janch Ghar. Meanwhile the Management issued him the chargesheet on 14.05.2005 for his unauthorized absent from his duty. He also replied to the chargesheet and it was found satisfactory. The workman was advised by the management to appear before the Medical Board as several time represented by him for it but he was not referred by the Management to the Medical Board. Thus he was victimized by the Management. Lastly, he raised the industrial dispute through the sponsoring Union on 26.04.2007.

Further alleged on behalf of the workman is that he was illegally dismissed by the Management On 25/27.06.2008 in violation of the Sec. 25(T) and 33 of the industrial dispute Act, so the action of the Management is not allowing the workman to join his duty is unjustified and illegal, as he was illegally stopped from working without proper domestic enquiry. He being sole earner of his family comes of a very weaker section of the Society. Hence, he is entitled to join his duty with full back wages from 17.05.2006 upto the date.

The Union in its rejoinder on behalf of the workman has categorically denied the allegations of the OP/Management, further stating the Enquiry Officer about his suffering from T.B. He appeared before the Medical Board for his medical examination, but it was not set up, he was medically examined. Despite the charges having been unproved, he was dismissed from his service.

3. Whereas the contra pleaded case of the OP/Management is that in fact the workman was working as U/G M/Loader at Basantimata Colliery, but he was a habitual absentee as per his attendance Record. He remained absent from 15.02.2005, so he was issued the Show Cause on

14.05.2005. When his reply to the Show Cause was found unsatisfactory, the Departmental enquiry was held in his presence and wherein he was given full opportunity for his defence before the Enquiry Officer. In course of the enquiry, the workman had submitted that he was suffering from Tuberculosis (T.B.) and on sympathetic ground, he was allowed to join his duty subject to the medical fitness and clearance directing for his appearance before the Medical Board for assessment of seriousness of the disease, but the workman did not turn up before the Medical Board on repeated requests. Even at another Show Cause in respect of it, when the workman did not appear before the Medical Board, the Management accordingly set up another enquiry informing of it to the workman, yet he did not attend the enquiry. It resulted in the an ex-parte enquiry wherein the Enquiry officer found him guilty of the charges, levelled against him. The Competent Authority on due consideration approved for the dismissal of the workman and accordingly he was dismissed from the service of the Company as per the letter dt. 25/27.06.2008.

The Management in its simultaneous rejoinder has categorically denied all the allegations as baseless, further alleging that the instant industrial Dispute was raised after one year.

#### FINDING WITH REASONS

4. In the instant reference, it is found that in course of hearing at the preliminary point about the fairness of the enquiry, at the acceptance of the enquiry as fair and proper by the Ld. Counsels for the Union/workman concerned as per petition dt. 03.04.2003, the Tribunal as per order No. 31 dt. 09.06.14 held the domestic enquiry fair, and proper. In result, it came up for hearing the final arguments of other the parties on merits.

Mr. R.R. Ram, the Ld. Advocate cum Joint General Secretary of the Union has submitted that despite the acceptance of the Management about the workman having been admitted in the Regional Hospital of the Company from 21.07.2005 to 13.12.2006, the workman was issued the charge sheet for his alleged unauthorized absentism. Though the workman had satisfactory replied to the chargesheet, the Management set up an enquiry in which the workman had participated and had submitted his Medical certificate as also accepted by the Enquiry Officer, after the enquiry, the Management neither dismissed nor allowed him to join his service but after the order of the present Reference; it is an unfair labour practice under Sec. 25(T) of the industrial Dispute Act, 1947. Further it has been submitted on behalf of the workman that it is not a case of dismissal, rather a case of victimization and harassment of the workman at hands of the Authority; as such the action of the Management in not allowing workman Satyanarayan Singh U/G M/Loader to join his duty in the company is illegal and unjustified; hence the workman is entitled to reinstment in his service with full back wages.

5. Whereas Mr. S.N. Ghosh, the Ld. Advocate for the OP/Management had contended that the workman was issued the chargesheet dt. 14.05.2005 for his unauthorized absence for duty *w.e.f.* 15.02.2005; three notices were issued to the workman for his appearance in the enquiry to be held by Mr. J.N. Banerjee, Sr. Personnel Officer as the enquiry Officer, meanwhile, at the transfer of aforesaid Mr. J.N. Banerjee, Mr. N.R. Chatterjee Sr. Personnel Officer was appointed as Enquiry officer who had also issued two notices dt. 21.06.2006 and 06.07.2006, then workman fully participated in the enquiry wherein the charge levelled against him under clause of 26.1.1 of the Certified Standing Order was proved against him beyond any doubt. It is also submitted on behalf of the Management is that seeing the tender age of the workman, the OP/Management allowed him to join his duty subject to the declaration of his fitness by the Area Medical Board (AMB). Despite repeated letters of the AMB (Area Medical Board) through the Medical Officer, the workman did not appear before the medical Board. Again the chargesheet dt. 10/11.03.2007 under clause 6.1.1 of the certified Standing Order was issued to the workman for his willful disobedience to lawful order of the Higher Authority; meanwhile the workman raised the industrial Dispute at the ALC(C) Dhanbad, resulting in the present reference. Further contention of Mr. Ghosh, the Ld. Advocate for the Management is that when the workman began to regularly absent, after his first presence in the enquiry proceedings as even in the enquiry even for the 2nd Chargesheet, the enquiry was held exparte; moreover, in course of the preliminary point, the workman has accepted the enquiry as fair and proper. According to Mr. Ghosh, Ld. Advocate for the OP/Management, once a domestic Tribunal based on evidence comes to a particular conclusion, normally it is not open to the Appellate Tribunal and the Court to substitute their subjective opinion in place of the one arrived at by the domestic Tribunal, there is no scope for the judicial review of its under Sec. 11A of the Industrial Dispute Act, 1947 (Divisional Constroller, KSRTC (NWKRTC) Vs. A.T. MANE., 2005 SSC (L&S) 407 (DB). The fact of the cited ruling directly relates to termination of the workman for his misconduct as a conductor resulting in financial loss to the appellant/Management concerned. Further plea of the Mr. Ghosh in reference to Sec. 11-A of the Industrial Dispute Act, is that in dismissal for 'misconduct under Mining Disciplinary Organization, it can never be interference by the Tribunal under the said Sec. to reduce the punishment to something less than dismissal as held in the case of Muraidih Colliery of M/s BCCL vs. Bihar Colliery Kamgar Union (BCKU), 2005 SSC(L&S) 412 (DB). This ruling relates to the penalty of dismissal to the workmen concerned for their grave misconduct of assault with deadly weapons upon their colleagues by causing them injuries. Whereas the instant Reference refers to the misconduct of unauthorized absence only. So the ruling seems in applicable to the factum of the case.



7. In the instant reference, on the perusal of the materials available on the case record, it stands evidently and incontrovertibly that the workman, N/G Loader was sick with fever at the relevant time, during which he was also admitted in the Central Hospital, Dhanbad, followed by his further private treatment upto 13.05.2006 as per his documents (Ext. W.1 Series). It also clearly appears that on the repeated instructions of the Agent of the Colliery as per his letter dt. 10.3.2007 and 06.01.2007 (Ext. W.2 series) to the workman, the latter did appear and submit his documents before the Colliery Medical Officer/the Apex Medical Board, but left the M.O. Hospital without filling his form but thereafter he did not appear before them. For this disobedience, the workman was dismissed from service with immediate effect as per the letter dt. 25/27.06.2008 of the Management (Ext. W.3). It also seems beyond dispute that against two chargesheets No. 288 dt. 14.05.2005 and No. 577 (sometimes as 572) dt. 10/11.08.2007 for two misconducts of the workman under clauses 26.1.1. and 28.1.10 of the Certified Standing Order of the Company for his absentism and disobedience respectively. But the second Show Cause (Ext. M.6) relates to the latter chargesheet only, whereas the dismissal order dt. 25/27.06.2008 (Ext. M.7) refers to absentism only. The alleged clause 28.1.10 of the Certified Standing Order of the alleged disobedience has not been brought in existence till now.

In view of the aforesaid facts and circumstances, that in view of the nature of the absentism misconduct which was due to his unavoidable sickness, none of the aforesaid rulings as cited by Mr. Ghosh. Ld. Advocate for Management holds good with factum of the case. The penalty of the disobedience to the workman for his absentism harsh and shockingly disproportionate to the nature of his misconduct of absentism. The order of dismissing is liable to be set aside under Sec. 11 A of the Industrial Dispute Act., 1947.

In result, it is hereby responded and accordingly awarded that the action of the Management of Basantimata Colliery of M/s BCCL is not allowing Shri Satyanarayan Singh U/G M/Loader to join his duty in the Company w.e.f. 17.05.2006 is not legal and justified. Hence the concerned workman is entitled to reinstatement in his service with his 50% back wages and financial benefits as well as his "Khoraki" for his sickness period.

The OP/Managements directed to implement and Award within one month from the date of its receipt following its publication in the Gazette of India.

KISHORI RAM, Presiding Officer

नई दिल्ली, 15 अप्रैल, 2015

**का.आ. 785.**—औद्योगिक विवाद अधिनियम, (1947 1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में

निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण कोलकता के पंचाट संदर्भ संख्या (22/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15/04/2015 प्राप्त हुआ था।

[सं० एल-12011/77/2012-आई आर(बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 15th April, 2015

**S.O. 785.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.22/2013) of the Cent.Govt. Indus.Tribunal-cum-Labour Court, Kolkata as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 15/04/2015.

[No. L-12011/77/2012-IR(B-I)]

SUMATI SAKLANI, Section Officer

#### ANNEXURE

#### CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL

#### AT KOLKATA

#### Reference No. 22 of 2013

**Parties:** Employers in relation to the management of Circle Welfare Committee

AND

Thier workmen

**Present:** Justice Dipak Saha Ray,  
Presiding Officer

#### Appearance:

On behalf of the Management : Mr. Susanta Pal, Ld.  
Counsel for Local Implementation Committee, State Bank of India, Kharagapur IIT Branch.

On behalf of the Workmen : None.

State: West Bengal. Industry: Banking

Dated: 6th April, 2015.

#### AWARD

By Order No. L-12011/77/2012-IR(B-I) dated 11.04.2013 the Government of India, Ministry of Labour in exercise of its powers under Section 10(1)(d) and (2A) of the Industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication:

"Whether the action of the management of the Ex-Officio of Local Implementation Committee, State Bank of India, Kharagapur IIT Branch in terminating

the services of 3 canteen employees namely S/Shri Shanti Ghosh, Amarendranath Das and Indrajit Rakshit is legal and/or justified? If not, to what relief the workmen are entitled to?

2. When the case is taken up today for hearing, Ld. Counsel of the Ex-officio President, Local Implementation Committee, State Bank of India, Kharagpur IIT Branch, Kharagpur appears: but none appears on behalf of the Ex-officio President, Circle Welfare Committee, State Bank of India, Local Head Office, Kolkata; Chief General Manager, State Bank of India, Local Head Office, Kolkata and the General Secretary, SBI Canteen Employees' Union (Bengal Circle), Kolkata, inspite of service of notice. It appears from the record that the concerned union at whose instance the instant reference has been initiated has not turned up since 09.12.2013.

3. From the above facts and circumstances it may reasonably be presumed that the concerned union is not at all interested to proceed with the case further. So, no fruitful purpose will be served in keeping the matter pending.

4. In such view of the matter, present reference is disposed by passing a "No Dispute Award".

Dated, Kolkata,  
The 6th April, 2005

Justice DIPAK SAHA RAY, Presiding Officer

नई दिल्ली, 15 अप्रैल, 2015

**का.आ. 786.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण कोलकता के पंचाट संदर्भ संख्या (23/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15/04/2015 प्राप्त हुआ था।

[सं एल-12011/76/2012-आईआर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 15th April, 2015

**S.O. 786.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.23/2013) of the Cent. Govt. Indus.Tribunal-cum-Labour Court, Kolkata as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 15/04/2015.

[No. L-12011/76/2012-IR(B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL  
AT KOLKATA**

**Reference No. 23 of 2013**

**Parties:** Employers in relation to the management of local implementation Welfare Committee

AND

Thier workmen

**Present :** Justice Dipak Saha Ray,  
Presiding Officer

**Appearance:**

On behalf of the Management : Mr. Susanta Pal, Ld. Counsel  
for Local Implementation  
Committee, State Bank of India,  
Hatibagan IIT Branch.

On behalf of the Workmen : None

State: West Bengal.

Industry: Banking

Dated: 6th April, 2015.

**AWARD**

By Order No.L-12011/76/2012-IR(B-I) dated 11.04.2013 the Government of India, Ministry of Labour in exercise of its powers under Section 10(1)(d) and (2A) of the industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication.

"Whether the action of the management of the Ex-Officio of Local Implementation Committee, State Bank of India, Hatibagan Branch in terminating the services of Shri Biswanath Mitra, canteen employee is legal and/or justified? If not, to what relief the workmen are entitled to?

2. When the case is taken up today for hearing, Ld. Counsel of the Ex-officio President, Local Implementation Committee, State Bank of India, Hatibagan Branch, Kolkata appears; but none appears on behalf of the Ex-officio President, Circle Welfare Committee, State Bank of India, Local Head Office, Kolkata Chief General Manager, State Bank of India, Local Head Office, Kolkata and the General Secretary, SBI Canteen Employees' Union (Bengal Circle), Kolkata inspite of service of notice. It appears from the record that the concerned union at whose instance the instant reference has been initiated has not turned up since 12.2013.

3. From the above facts and circumstances it may reasonably be presumed that the concerned union is not at all interested to proceed with the case further. So, no fruitful purpose will be served in keeping the matter pending.

4. In such view of the matter, present reference is disposed by passing a "No Dispute Award".

Justice DIPAK SAHA RAY, Presiding Officer  
Dated, Kolkata,  
The 6th April, 2015.

नई दिल्ली, 15 अप्रैल, 2015

**का.आ. 787.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण धनबाद के पंचाट संख्या (124/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10/04/2015 प्राप्त हुआ था।

[सं एल-12011/07/2013-आईआर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 15th April, 2015

**S.O. 787.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.124/2013) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No-2, Dhanbad as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 10/04/2015.

[No. L-12011/07/2013-IR(B-I)]

SUMATI SAKLANI, Section Officer

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT  
INDUSTRIAL TRIBUNAL (NO.2), AT DHANBAD.**

**PRESENT**

Shri Kishori Ram,  
Presiding Officer

In the matter of an Industrial Dispute under Section  
10(1)(d) of the I.D. Act, 1947

**Reference No 124 of 2013.**

**Parties:** Dy. General Secretary,  
State Bank of India Staff Association, State Bank  
of India, L.H.O., Patna.

**Vs.**

The Chief General Manager,  
State Bank of India, Local Head Office, Patna.  
Order No. L-12011/07/2013-IR(B-I) dt. 21.05.2013.

**Appearances :**

On behalf of the workman/Union : Mr. Vijay Kumar Roy,  
Workman's  
Representative,

On behalf of the Management : Mr. Noor Alam,  
Management's  
Representative

State : Bihar Industry : Banking

Dated, Dhanbad, the 23rd Feb., 2015

**AWARD**

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec. 10(1)(d) of the I.D. Act., 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-12011/07/2013-IR(B-I) dt. 21.05.2013.

**SCHEDULE**

"Whether the action of the Management of State Bank of India to propose the punishment of removal of Sh. Rupak Kumar was proportionate? If not, to what relief the workman concerned is entitled for?"

On receipt of the Order No. L-12011/07/2013-IR(B-I) dt. 21.05.2013 of the above mentioned reference from the Government of India, Ministry of Labour & Employment, New Delhi for adjudication of the dispute, the Reference Case No. 124 of 2013 was registered on 12.06.2013 and accordingly an order to that effect was passed to issue notices through the Registered Posts to the parties concerned, directing them to appear in the Court on the date fixed, and to file their written statements along with the relevant documents. In pursuance of the said order, notices by the Registered Posts were sent to the parties concerned.

Both the parties made their appearances and filed their pleadings and photocopies of their documents. The Union and the O.P./Management through their own Ld. Counsels appeared respectively, and contested the case.

2. The case of workman Rupak Kumar as sponsored by the State Bank of India Staff Association is that a bilateral settlement between India Banks Association and the Representatives of workman come under Secs. 2(p) and 18(1) of the Industrial Dispute Act, 1947 read with Rule 58 of the Central Disputes Rules, 1957. It is an binding on both the parties. The workman was served upon the charge-sheet dt. 14.05.2009 by the Disciplinary Authority. Thereafter, it was brought one stage lower in the scale of the workman as per the Order Memo No. DPS/AGM/(Admin)/09 dt. 29.05.2009 of the Disciplinary Authority. But the Management arbitrarily but directly intervened not only the punishment by withdrawing the Order as per the Letter No DPS/AGM/(Admn)/No. 65 dt. 22.01.2010, violating the Memorandum of the Settlement, but also in not letting the Disciplinary Authority independently work as inferable from the letter No. AGM(Admn)/P/Das/34 dt. 06.06.2009. The initiation of fresh enquiry on the same charge after the order of the Disciplinary Authority was forcible and against the principle of natural justice, as the workman's witness was not allowed for defence/witness as also agreed and communicated by the management in the conciliation proceeding before the A.L.C.(C) Patna. At last, workman Rupak Kumar was removed from the Bank Service as per Memo No. G/2.1 dt. 20.03.2013. The established rule is that there can not be two punishments

for the same chargesheet. So the action of the Management of the SBI is vindictive and against all forms of justice.

3. The Association concerned for the workman in its rejoinder has alleged that according to the policy of the Bank as per the Corporate Centre/Apex Office letter No. CDO/IR/SPL/418 dt. 05.10.2007 where employees suppressed their already qualification of graduation at the time of appointment will not be given the benefit of additional marks as compared to those who have completed their graduation after graduation would get it. It relates to the promotion policy for the additional marks to the Subordinate Staff having got higher qualification at the time of the promotional examination. But it prescribes not any penal action except the credit for such higher qualifications is negated for those who have suppressed at the time of appointment. The workman concerned had appeared at the Matriculation Examination afresh to avail his career progress opportunities. The workman having realized his guilt had not protested the proposed punishment. The act of the Bank Management initiating another round of disciplinary exercise amounted to "Double jeopardy" as incorporated in the Memorandum of Settlement dt. 10.04.2002, as it formulates "A workman found guilty of misconduct, whether gross or minor, shall not be given more than one punishment in respect of any one charge". Moreover, the Memorandum of Settlement under para 12 does not warrant for holding an enquiry, if the employee makes a voluntary admission of his guilty in reply to the Show Cause Notice. The subsequent enquiry proceeding is contrary not only to the aforesaid Memorandum of Settlement but also to the Fundamental rights of the workman under the Article 20(2) of the constitution of India.

Further alleged by the Association concerned for the workman is that the observation of the Hon'ble High Court "Law is well settled that disciplinary authority is always entitled to recall a part of whole of disciplinary proceeding and commence afresh" was based on the impression continuity of the enquiry as represented by the Learned Counsel concerned for the Bank Management, the right of the workman was acknowledged by the Hon'ble High Court to agitate the matter before an appropriate forum.

4. Whereas challenging the maintainability of the reference in law and facts, the contra case of the OP/ Management is that the workman fraudulently entered into the employment of the Bank and subsequently got promotion accordingly. He had, at the time of appointment, submitted a School Leaving Certificate dt. 16.09.1996 from High School Bharwari, Distt: Muzaffarpur for studying in class IX, despite already passing Matriculation Examination from Bihar High School Examination Board, Patna, in 1992. Again having concealed it at the time of promotion to the Clerk Grade, he produced a Certificate of passing Matriculation Examination from High School, Bansigha, Dhanurua, in 2002. The aforesaid acts of the workman

constituted his misconduct, so he was issued the charge sheet dt. 14.5.2009 by the Management. The workman submitted his reply to it before the Disciplinary Authority. But without initiation of a domestic enquiry in regard to the chargeheet, the Disciplinary Authority had issued him the Second Show Cause Notice and proposed to inflict a penalty of "reduction of one increment in scale of pay." Thereafter, in view of the principle of natural justice, the Disciplinary Authority decided to hold the domestic enquiry related to aforesaid chargesheet, recalling the 2nd Show Cause Notice, and the Enquiry Officer was appointed by the Disciplinary Authority to conduct the domestic enquiry in consonance with the principle of natural justice. On notice of the enquiry, the workman did not appear before the Enquiry Officer on 12.03.2010, the date for the enquiry, rather he submitted a representation before the Enquiry Officer with a request to pass an order as per the direction of Hon'ble High Court, Patna, in the CWJC No. 4390/2010, the subsequent enquiry proceeding was contrary to the Memorandum of Settlement dt. 10.04.2002. On the attendance of the workman in the enquiry on 5.5.2010, the Enquiry Officer instructed him to participate in the enquiry on the date fixed 22.6.2010. The workman filed the CWJC No. 12045 for quashing the disciplinary proceedings initiated by the Disciplinary Authority. But the same was disposed of by the Hon'ble High Court as per the Order dt. 29.07.2010 with liberty to the workman to raise his submission before the Chief General Manager. In the Appeal: LPA No. 1345/2010 preferred by the Management against it, the Hon'ble High Court was pleased to allow the Appeal as per the order dt. 4.4.2011, holding as such "disciplinary proceeding has to be conducted according to the Rule and prescribed procedure it invariably lays down the hierarchy of authorities for the purpose. In such a situation, the Learned Single Judge erred in creating a new authority in the matter which is inconsistent with the rule and prescribed procedure" Further more, law is settled that Disciplinary Authority is always entitled to recall a part or whole of disciplinary proceeding and commence afresh. The impugned action of the Appellant Authority recalling the second Show Cause notice is, therefore, fit to be upheld."

5. Consequently the Enquiry Officer fairly and properly conducted the domestic enquiry in accordance with principle of natural justice in presence of the workman, and submitted his enquiry report, holding the charges levelled against him proved. On the second Show Cause Notice by the Disciplinary Authority, the workman submitted his reply to it, but after hearing the workman in person and on due consideration of all facts and circumstances, and gravity of nature of his misconduct, the Disciplinary authority awarded him with the punishment of 'removal from service with superannuation benefit (Pension, Provident Fund and Gratuity) which is legal and justified. The punishment inflicted upon the workman is fully proportionate to the grave nature of his misconduct. The Management also



sought a permission to prove the charge on merits, in case, the enquiry held unfair at the preliminary point.

The OP/Management in its simultaneous rejoinder has categorically denied all the allegations of the workman, further stating to have fairly conducted the domestic enquiry under clause 12 (a) of the Memorandum of Settlement dt. 10th April, 2002 on disciplinary action for workman.

### **Finding with Reasons**

6. In view of the nature of the reference, at the direct contest of the workman on merits, WW Rupak Kumar, the workman himself, WW2 Sachchidanand Sinha, Retd. Asstt. G.M. of the Admn. Officer, Patna, on behalf of the Association concerned and MW1 Sunil Kumar Singh, the Manager (H.R.) for the OP/Management have been respectively examined.

On perusal of the pleadings and evidences, oral and documents of both the parties, it appears to be no dispute that workman Rupak Kumar, already a Matriculation in the year 1992, entered into the service of the Bank as the Messenger in the year 2000 on the basis of its requisite minimum qualification on non-Matric by concealing it at the time of his appointment. Further in order to get his career progression through the Departmental Examination for his promotion, he again passed the Matriculation for his promotion in the year 2002 from Higher School, Bans Bigha, Dhanarua, after taking the permission from the Bank Management, and he got promotion to the post of the Assistant as per the S.B.I letter dt. 24.1.2008 (Ex.W.7) following his success in the department Examination. The indisputable fact is that on the charge sheet dt. 14.05.09 (Ext.W.2) to him for his aforesaid misconduct, the delinquent employee replied to it and accepted his guilt of the misconduct as stated in the chargesheet. In the face of it, there are some important facts at variances with others on mode of the enquiry. It evolves the main issue for a proper adjudication in the terms of the reference:

Whether the enquiry was held afresh by the OP/Management for the same misconduct of the delinquent employee.

At the point, Mr. Vijay Kumar Roy, the Union Representative for the workman has to submit that on the acceptance of his guilt/misconduct by the delinquent workman as per his statement (Ext. W.4) in response to the chargesheet dt. 14.05.2009 (Ext.W.2), once the Show Cause Notice dt. 29.05.2009 to be replied within 10 days (Ext.W.3) was issued/served upon him for the proposed punishment of lowering down one stage in the scale of pay, its recalling for holding a De novo on fresh enquiry into the charge sheet as per the Memo No. dt.22.01.2010 (Ext.M.5) is violative of the Memorandum of Settlement dt. 10.04.2002 (Ext.W.1) as covered under Sec 2(p) and 18(i) of the I.D. Act, 1947 read with the Rule 58 of the Industrial Disputes (Central) rule, 1957 which prohibits it and De novo trial as

well. Further the Learned Union Representative has emphatically argued that there was no need to hold the enquiry, in case at the outset at the chargesheet, the workman had prima facie accepted his guilt of the misconduct, and twice infliction of his removal from the service for the same misconduct is violative of the Fundamental Rights is enshrined under the Article 20(2) of the Constitution of India, as well as the prevailing rules. The workman, against whom penalty of lowering one stage in his pay scale was awarded and implemented, is entitled to his re-instatement in service with full back wages and consequential benefits. In support of his argument, the learned Union Representative relied upon the ruling (2013) 12 SCC 372, Lucknow Vs. Gramin Bank Vs. Rajendra Singh, and submitted, as held therein, that 'When it is found that the employee concerned and the co-delinquent are equally placed and there is complete parity between the two, and if co-delinquent accepts the charges indicating remorse with unqualified apology, lesser punishment to him could be justified. But the reference has not any co-delinquent with the present workman, so the ruling appears to be inapplicable to the case.

7. Whereas in view of grave nature of the admitted misconduct of the workman for fraudulently getting his employment firstly as a Messenger then as the Assistant on promotion in the employment of the OP/management, Mr. Noor Alam, the Representative of the Management has contended that in course of response of the workman to the Show Cause Notice dt. 29.05.2009 (Ext. M.3) about the proposed penalty of lowering down one stage in his pay scale which was based on the summary proceedings only, the Disciplinary Authority as per the Memo No. 65 dt. 22.01.2010 (Ext. W. 5) withdrew it and ordered for holding a proper Departmental Enquiry in the terms of Clause 12(a) of the Bipartite Settlement dt. 10.04.2002 but the workman though evaded his appearance yet submitted a representation before the Enquiry Officer A.K. Mishra, AGM, that he had filed the CWJC No. 12045/2010 for quashing the departmental proceeding; The writ was disposed of by the Hon'ble High Court, Patna, as per the order dt. 29.07.2010 (Ext. M.1) with liberty to the workman to raise his submission before the Chief General Manager; therefore, in the LPA No. 1345/2010 preferred by the OP/Management against it, the Hon'ble High Court as per the order dt. 14.04.2011 (Ext. M. 1/2) was pleased to uphold the impugned action of the Appellate/Management recalling the second Show Cause Notice. It is also submitted on behalf of the OP/Management that after holding the domestic enquiry in presence of the workman, the Enquiry Officer submitted his report to the Disciplinary authority, before whom the workman also appeared and made his submission on 04.03.2013, and after hearing the workman in person and considering all the facts and circumstances of the grave misconduct of the workman, the Disciplinary Authority inflicted upon him the punishment of his removal

from service with superannuation benefits (Pension, Provident fund and Gratuity) as per the relevant Rules and Regulations, but without disqualification from future employment; as such the punishment of his removal from service was just and proportionate to the grave nature of his gross misconduct as prescribed in the Bipartite Settlement; hence, he is not entitled to any relief.

8. In the light of aforesaid facts of the case, Mr. Alam, the OP/Management's Representative has argued that a quasi Judicial authority will become functus officio only when its order is pronounced or communicated to the Party concerned, When an order is made in office noting, but is not pronounced, published or communicated, nothing prevents the authority for correcting it or altering it for the full reasons as held in the case of State Bank of India & Ors V.S.N. Goyal reported in (2008) 8SCC 92 (DB); and that in the instance case, the Disciplinary Authority had not passed the final order, rather issued the Second Show Cause for proposed punishment of lowering down one stage in his pay scale based on summary proceeding and no response to it from the workman; meanwhile the Disciplinary Authority recalled the 2nd Show Cause for holding a proper enquiry into the charge sheet against the workman, the Authority had not become functus officio, as he was well within his legal right to proceed with the proceeding properly, as the aforesaid Bipartite Settlement rules under Para 12 (e) (ii) was not complied with by the workman through is any reply to the 2nd Show Cause, which was, meanwhile recalled by the Competent Authority for a proper enquiry into the charge sheet against the workman.

On consideration of the aforesaid materials available on the case record, I find recalling of the 2nd Show Cause Notice by the Disciplinary Authority which was neither served upon nor responded by the Workman, was virtually in the continuity of the Departmental proceedings for the gross misconduct. The delinquent employee could neither produce nor prove his any receipt of the Memo dt. 29th May, 2009 related to his proposed punishment of lowering down one stage or its implementation prior to its recall for proper enquiry. So the enquiry was continued for ends of justice. Thus the enquiry was not held up afresh by the OP/Management for the same misconduct of the delinquent employee. In such situation, no question arises for double punishments for a single misconduct.

9. So far as quantum of punishment is concerned, since the charges as leveled against the workman for his gross misconduct under Para 5(m) was proved against him in respect of his knowingly making a false statement with regard to his employment in the Bank. Hence infliction of removal penalty upon him from his service with superannuation benefits under Para 6 (b) of the aforesaid Settlement for his aforesaid gross misconduct is quite proportionate to the grave nature of it.

In result, it is hereby responded and accordingly awarded that the action of the Management of the State

Bank of India to propose the punishment of removal of the workman Rupak Kumar was undoubtedly proportionate to the grave nature of his gross misconduct at the time of his employment in the Bank. Therefore the workman is not entitled to any relief.

KISHORI RAM, Presiding Officer

नई दिल्ली, 15 अप्रैल, 2015

**का.आ. 788.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक ऑफ मैसूर के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण बैंगलोर के पंचाट (संदर्भ संख्या 6/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10/04/2015 को प्राप्त हुआ था।

[सं. एल-12012/111/2006-आईआर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 15th April, 2015

**S.O. 788.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 6/2007) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Bangalore as shown in the Annexure, in the industrial dispute between the management of State Bank of Mysore and their workmen, received by the Central Government on 10/04/2015.

[No. L-12012/111/2006-IR (B-I)]

SUMATI SAKLANI, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 18th March, 2015

PRESENT : SHRI S. N. NAVALGUND,  
Presiding Officer

**C.R. No. 06/2007**

#### I Party

Sh. K V Nagendra,

S/o late Sri Venkatappa,  
Bhovi, Nr Bhovi Katte Mn Rd,  
KONANDUR-577 422

#### II Party

The Assistant General  
Manager,  
State Bank of Mysore,  
Regional Office,  
HASSAN.

#### Appearances

**I Party :** Shri D Leelakrishnan,  
Advocate

**II Party :** Shri R Narayan,  
Advocate

**AWARD**

1. The Central Government *vide* Order No. L-12012/111/2006-IR (B-I) dated 31.01.2007 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Dispute act, 1947 has made this reference for adjudication with following Schedule:

**SCHEDULE**

"Whether the management of State Bank of Mysore is justified in imposing the punishment of compulsory retirement from service on Sri K. V. Nagendra *w.e.f.* 30.04.2003? If not, what relief Sri K. V. Nagendra is entitled?"

2. On receipt of the reference while registering it in C R No. 06/2007 when notices were issued to both the parties, I party entered his appearance through Sh. D. Leelakrishnan, advocate and filed his claim statement on 09.07.2007 and II Party entered its appearance through Sh. R. Narayan, advocate and filed its counter statement on 17.12.2007.

3. The brief facts lead to this reference and award are as under.

4. Sh. K. V. Nagendra (hereinafter referred as I Party) while working as Cashier Clerk at the N. R. Pura Branch of the State Bank of Mysore (hereinafter referred as II Party) was issued with charge sheet dated 18.02.2002 as under:

**"Charge Sheet**

It is alleged that on 29.10.2001 while you were working as Acting head Cashier at around 12.45 p.m. you have forcibly snatched away four (4) sections of Rs. 100/- denomination notes from Sri Edwin, Deftary from out of the cash given to him for stitching by Sri B. T. Sheshadrivasa, Cashier Clerk. It is also reported that thereafter you returned only two (2) sections of Rs. 100/- denomination notes to daftary in front of Sri Sheshadrivasa. As such you have not returned the other two (2) sections of Rs. 100/- denomination notes and the same was misappropriated by you. Thereafter the said amount of Rs. 20000/- (Rupees Twenty Thousand only) was remitted by you on 22.11.2001 towards repayment of the amount misappropriated by you. You have remitted a sum of Rs. 210/- towards the interest for the same on 07.02.2002.

The above act of misappropriation on your part, if proved, would amount to Gross Misconduct under clause 19.5 (j) of the 6th Bipartite Settlement. You are, therefore, directed to show-cause within 15 days from the receipt of this charge sheet as to why disciplinary action should not be taken against you for gross misconduct. In case you fail to submit your explanation within the time specified above, it will be presumed that you have no explanation to offer and necessary action would be taken without any further reference to you.

Sd/-

Assistant General Manager II  
And Disciplinary Authority"

being not satisfied with this reply dated 23.04.2002, the Disciplinary Authority by appointing Sh. T.N. Chandrashekaraiah, Branch Manager as Enquiry Officer and Sh. M. B. Suryanarayana, Deputy Manager as presenting Officer directed the I Party to face the enquiry. The Enquiry Officer while observing the formalities of preliminary hearing receiving the evidence of Sh. Sunder M. R. Branch Manager of N. R. Pura Branch; Sh. Sheshadri Vasa B. T. Cashier Clerk; Sh Edwin, Daftary and Sh. B. D. Kamble, Assistant Manager Advances, Shedbal Branch as BW 1 to BW 4 and exhibiting Attendance Register for the month of October 2001; Key Register; Accountant Scroll dated 29.10.2001; Branch Manager's Scroll dated 29.10.2001; Rough Vault Register dated 29.10.2001; Vault Register (copy) maintained by Accountant/Joint Custodian; Operative Vault Register (copy) deposit and withdrawals from 24.10.2001 to 29.10.2001; Suspense Account debit voucher; credit voucher dated 22-11-2001; Transfer debit voucher dated 07.02.2002; report of Branch Manager dated 02.11.2001 regarding cash shortage on 29.10.2001; letter addressed to AGM, R2, MZ dated 29.10.2001 regarding cash shortage on 29.10.2001; copy of the complaint letter dated 29-10-2001 given by Sh. B. T. Sheshadri Vasa to Branch Manager; copy of the complaint about the incident occurred on 29.10.2001 given by B. T. Sheshadrivasa to Branch Manager on 30.10.2001; copy of the complaint about the incident occurred on 29.10.2001 given by B. T. Sheshadrivasa to Branch Manager on 13.11.2001; letter of Sh. Edwin addressed to Branch Manager about the incident of 29.10.2001; letter addressed by Sh. Edwin to the Branch Manager dated 29.10.2001; letter dated 10.11.2001 addressed by Sh. Edwin to Branch Manager, N. R. Pura, regarding incident on 29.10.2001; letter dated 13.11.2001 addressed by Sh. Edwin to Branch Manager; letter of Sh. B. D. Kamble, Assistant Manager Advances to Branch Manager on 29.10.2001 and letter dated 29.10.2001 with reference to the cash shortage on 29.10.2001 as BEx-1 to BEx-21 on behalf of the management and Smt. Nagalakshmi A. S., Typist and Sh. Jinachandra, Cashier/Clerk and exhibiting letter of Sh. B. D. Kamble to the Manager regarding cash shortage dated 13.11.2001; letter of Smt. Prathibha M. G. regarding the incident dated 29.10.2001 to the Manager dated 10.11.2001; copy of cashier's receipt book dated 29.10.2001 and copy of Head Cashier receipt book a DEx-1 to DEx-4 on behalf of the defence, after submission of written brief by both the sides, the Enquiry Officer gave his enquiry report dated 20.12.2002 that in the light of doctrine of Preponderance of probability the CSE is considered as Guilty of Charges. On submission of the enquiry report the Disciplinary Authority issued show-cause notice dated 10.01.2003 and after receipt of the reply from the I Party dated 06.03.2003 the Disciplinary Authority *vide* order dated 24.04.2003 imposed the punishment order of Compulsory Retirement from Service and then the I Party *vide* his letter dated 15.03.2004 made an appeal to the Deputy General Manager/Appellate Authority which came to be



rejected by order dated 05.12.2004 and the I Party approached ALC (C), Mangalore, in conciliation which ended in failure *vide* his report dated 30.06.2006 which resulted in this reference.

5. Having regard to certain allegations made in the claim statement touching the fairness of the Domestic Enquiry while raising a Preliminary Issue as to "Preliminary Issue" after receiving the evidence adduced by both the sides the said issue has been answered in the affirmative *i.e.*, the Domestic Enquiry conducted by the II Party is fair and proper by order dated 11.08.2001. Thereafter, opportunity was given to the I Party to lead evidence on victimization if any and being not gainfully employed but no evidence is given and submitting that he has no evidence on the same written arguments was filed on merits.

6. Since the Domestic Enquiry conducted by the II Party against the I Party has been held as Fair and Proper by order dated 11.08.2011, the points that now arises for my consideration are:

*Point No. I:* Whether the finding of the Enquiry Officer charge is proved is perverse necessitating the interference of this Tribunal?

*Point No. II:* If not, whether the punishment of Compulsory Retirement from Service imposed by the Disciplinary Authority affirmed by the Appellate Authority is disproportionate?

*Point No. III:* What Order/Award?

7. On appreciation of the pleadings, oral and documentary evidence placed on record in the Domestic Enquiry, in the light of arguments put forward by both the sides my finding on Points No. 1 and II are in the negative and Point No. III is as per the final order for the following.

### REASONS

8. In the written arguments filed on merits nothing has been highlighted as to how the enquiry finding could be held as perverse and much is discussed about the Domestic Enquiry which has already been held as fair and proper. The Charge against the I Party was being that while he was working as Acting Head Cashier at N. R. Pura Branch at around 12.45 p.m. he forcibly snatched 4 sections of Rs. 100/- denomination notes from Sh. Edwin, Daftary from out of the cash given to him for stitching by Sh. B. T. Sheshdrivasa, Cashier Clerk and thereafter he returned only two sections of Rs. 100/- denomination notes to daftary in the presence of Sh. Sheshdrivasa and failed to return other two sections of Rs. 100/- denomination notes and later on 22-11-2001 he remitted the said amount of Rs. 20000/- and subsequently a sum of Rs. 210/- remitted towards interest on 07.02.2002 and thereby committed gross misconduct under clause 19.5 (j) of 6th Bipartite Settlement. It is seen from the enquiry file after service of the charge sheet wherein he was directed to show cause within 15 days of receipt of the charge

sheet after getting extended time twice by filing application on 23.04.2002 he gave his reply just stating that the allegations are totally false and baseless. Though on the allegations of charges the very daftary Sh. Edwin examined as BW 3 has deposed to and with regard to hue and cry by Sh. Edwin and by his interference two sections of Rs. 100/- denomination being returned by CSE is affirmed by the cashier clerk Sh. B. T. Sheshdrivasa, Cashier Clerk examined as BW 2 nothing has been elicited in their cross-examination to disbelieve their version. Further the documentary evidence produced at BEx-8 since do disclose he having remitted a sum of Rs. 20000/- on 22-11-2001 alleged to have been retained by him out of the amounts snatched from Sh. Edwin, daftary and Rs. 210/- as interest on the said amount on 07.02.2002, absolutely, I find no reason to say the finding of the Enquiry Officer charge is proved being perverse. Under the circumstances, I have arrived at conclusion of answering this point in the Negative.

9. Now coming to the aspect of punishment imposed for the alleged misconduct, when a responsible Bank Employee like I Party who was acting as Head Cashier on the day of incident snatching away four section of Rs. 100/- denomination notes entrusted to Daftary Sh. Edwin and after he raised hue and cry at the intervention of other bank employees by returning two sections of Rs. 100/- denomination notes and by retaining the remaining two section of Rs 100/- denomination of Rs. 20,000/- over a period of 22 days and remitting the same and later interest on the said amount do amount to a gross misconduct, there is no reason to say the punishment of compulsory retirement imposed being disproportionate. Under the circumstances, having arrived at conclusion of answering second point as well in the Negative, I pass the following.

### ORDER

The management of State Bank of Mysore is justified in imposing the punishment of compulsory retirement from service on Sri K. V. Nagendra *w.e.f.* 30.04.2003 and that he is not entitle for any relief.

(Dictated to UDC, transcribed by him, corrected and signed by me on 18th March, 2015)

S. N. NAVALGUND, Presiding Officer

नई दिल्ली, 15 अप्रैल, 2015

**का.आ. 789.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की 17 के अनुसरण में केन्द्रीय सरकार व्हील एण्ड एकसल पंलाट प्रबंधतंत्र के सबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, बैंगलोर के पंचाट संदर्भ संख्या (149/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10/04/2015 प्राप्त हुआ था।

[सं एल-41012/183/2003-आईआर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी



New Delhi, the 15th April, 2015

**S.O. 789.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 149/2007) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Bangalore as shown in the Annexure, in the industrial dispute between the management of Wheel and Axle Plant and their workmen, received by the Central Government on 10/04/2015.

[No. L-41012/183/2003-IR (B-I)]  
SUMATI SAKLANI, Section Officer

### ANNEXURE

### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

Dated : 11th February, 2015

**Present** : Shri S N Navalgund,  
Presiding Officer

### C R No. 149/2007

#### I Party

Sh. E Mahesha,  
S/o Late Sh. Eshwar Rao,  
No. 59, Gavipuram Post,  
Hanumanthanagar Post,  
Bangalore- 560 018

#### II Party

The General Manager,  
Wheel and Axle Plant,  
Yelahanka,  
Bangalore- 560 064

#### Appearances.

I Party : Shri B S Venkatesh  
Advocate

II Party : Shri S R Khamroz Khan  
Advocate

### AWARD

1. The Central Government vide Order No. L-41012/183/2003-IR (B-1) dated 16.11.2007 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Dispute act, 1947 has made this reference for adjudication with following Schedule:

### SCHEDULE

"Whether the action of the management of M/s. Wheel & Axle Plant, Ministry of Railways, in not reinstating and regularizing services of Shri E. Mahesha, is justified? If not, what relief Shri E Mahesha is entitled to?"

2. On receipt of the reference while registering it in C R 149/2007 when notices were issued to both the parties, I Party entered his appearance through Sh. B S Venkatesh, Advocate and filed his claim statement, on 25.01.2008 and II Party entered its appearance through Sh. S.R. Khamroz Khan, advocate and filed counter statement on 10.02.2010 by post.

3. The I party in his claim statement asserts that he who has studied upto 8th std. was engaged by the II party as Substitute Emergency Peon on Pay scale of Rs. 2550 to Rs. 3200 through an order dated 15.06.1988 and thereafter by order dated 18.11.1998 he was conferred with status of Temporary Peon having completed 120 days of services and abruptly he was issued with letter of termination dated 23.05.2000 stating that he was engaged as Substitute Emergency Peon by Sh. P K Chaterjee Ex-CME and as he is transferred his services is no more required. It is further asserted that he was engaged by the II Party and not by Sh. P K Chaterjee and that he having worked continuously from 1988 to 2000 without any break his termination without notice and compensation is illegal and unjustified and that he is entitle for reinstatement with full backwages and all other consequential benefits. Inter alia, in the counter statement filed for the II Party it is conternded Rail Wheel Factory being a production unit of Indian Railways the Administrative Grade Officers being entitle to have one emergency Peon in Group D of their choice Sh. P.K. Chaterjee who was working as chief Mechanical Engineer in Senior Administrative Grade was provided with the services of the I Party by giving an offer of engagement and on acceptance of the said offer his services were engaged as Substitute Emergency peon in the scale of Rs. 2550 to Rs. 3200 w.e.f. 24.06.1998 and was attached to work under Sh. P K Chaterjee then working as Chief Mechanical Engineer and the averments of the claim statement that he was engaged as Substitute Emergency Peon since 1988 is not correct. It is further contended since the I Party completed 120 days of service as Substitute Emergency Peon he was granted a temporary status w.e.f. 18.11.1998 and was given all benefits admissible to temporary railway employees which does not confer any permanent status and consequent to transfer of Sh. P.K. Chaterjee to South Eastern Railway, Kolkata and his successor or any other Grade Officers did not wish to avail his services his services came to be terminated w.e.f. 23.05.2000 as per clauses 4 and 5 of the offer of the appointment. Thus, it is contended the I Party having accepted the terms and conditions of offer of appointment wherein it is stated his services could be terminated within 3 years in the event of his services not being required by the Officer to whom he is attached or in case the officer to whom he is attached is transferred his contention that his termination is illegal and oppose to the

natural justice etc. is not acceptable. It is also contended that in O A 896/1995 read with OA 1764/1992 and O A 817/1994 between Sham Sundar, Bungalow Peon vs. Northern Railways and other before the Principal Bench of Central Administrative Tribunal, the termination of Substitute bungalow Peon/Khalasi who has acquired temporary status being held not bad or illegal for want of notice before termination the assertion that his termination without notice is bad has no force. Thus, it was prayed for rejection of the reference. Later by way of amendment it is contended that I Party is not workman within the meaning of Section 2(s) of the ID Act as such the reference is not maintainable.

4. With the above pleadings when the matter was posted for evidence the learned advocate appearing for the II Party while filling the affidavit of Sh. R Narasimha Murthy, Chief Staff and Welfare Inspector reiterating the contents of the counter statement examining him on oath as MW 1 got marked Authorisation letter given in his favour by the Chief Personnel Manager dated 30.08.2010; Offer of appointment and Acceptance of I party dated 24.06.1998; Officer Order dated 24.06.1998 for engagement of I Party; Memorandum confirming with temporary status in respect of I Party and two others dated 18.11.1998; copy of office order dated 23.05.2000 regarding termination of service of I Party as Ex M-1 to Ex M-5 and closed his side. Inter alia, the learned advocate appearing for the I Party while filing the affidavit of I Party reiterating the contents of the claim statement examining him on oath as WW 1 closed his side and when the matter to be posted for arguments, whereas, counsel appearing for the II Party addressed his oral arguments.

5. On appreciation of the pleadings, oral and documentary evidence brought on record by both the parties in the light of the arguments put forward by them, I have arrived at conclusion that the II Party being justified in not reinstating and not regularising the services of the I Party and that he is not entitle for any relief for the following.

### REASONS

6. There is no material to substantiate the allegation of the claim statement the I party having worked from 1988. On the other hand he having categorically admitted in his cross-examination that he was appointed as per Ex M-2 dated 24.06.1998 his appointment as Substitute Emergency peon w.e.f. 24.06.1998 and not from 15.06.1988 as contended by the II Party is correct. When he categorically admits that his appointment was as per Ex M-2 which is an offer of appointment accepted by him and as per this documentary evidence i.e. offer appointment produced at Ex M-2 it was proposed to engage him as Substitute Emergency Peon/ Group D on pay of Rs. 2550.00 in scale Rs. 2550 to Rs. 3200 for attaching to Sh. P K Chaterjee, Ex- CME/G and that his engagement will not confirm upon him any right to claim

for further continuance in the Railways and is liable to be discharged without notice when his services will not be required by the Administration or on expiry of the currency for the post against which he was employed and can be discharged by giving 15 days notice in case his working is found unsatisfactory and that he will not be considered for transfer as substitute Emergency Peon from One Railway to another Railway in case of the transfer of Officer to whom he is attached and his service at Emergency peon stands terminated automatically he that he has no right for absorption. Since the I party accepted these terms and conditions and put his signature marked as M-2(a) the contention of the II Party has to be accepted. Since there is no dispute that Sh. P K Chaterjee, CME was being transferred to South Eastern Railways, Kolkatta the termination of the services of I Party being as per the terms and conditions of the appointment the II Party is justified in not entertaining his request/claim for reinstatement and regularising his services. In the result, I pass the following.

### ORDER

The action of the management of M/s. Wheel and Axle Plant, Ministry of Railway, in not reinstating and regularizing services of Shri E Mahesha, is justified and legal and that he is not entitle for any benefits.

(Dictated to UDC, transcribed by him, corrected and signed by me on 11th February, 2015)

S. N. NAVALGUND, Presiding Officer

नई दिल्ली, 15 अप्रैल, 2015

**का.आ. 790.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक ऑफ मैसूर प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, बेंगलूर के पंचाट (संदर्भ संख्या 54/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10/04/2015 को प्राप्त हुआ था।

[सं. एल-12012/160/2000-आईआर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 15th April, 2015

**S.O. 790.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 54/2005) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Bangalore as shown in the Annexure, in the industrial dispute between the management of State Bank of Mysore and their workmen, received by the Central Government on 10/04/2015.

[No. L-12012/160/2000-IR (B-I)]

SUMATI SAKLANI, Section Officer

**ANNEXURE****BEFORE THE CENTRAL GOVERNMENT  
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,  
BANGALORE**

Dated : 8th April, 2013

Present : SHRI S. N. NAVALGUND,  
Presiding Officer**CR No. 54/2005****I Party**Sh. A Ramesh,  
S/o P Appaji Gowda,  
Madapura Doddi  
(Colony), Nidghatta Post,  
Athakura  
Hobli, Maddhur Taluk,  
Mandya District**II Party**The Managing Director,  
State Bank of Mysore.  
Head Office,  
Kempegowda Road.  
Bangalore-560 009.**Appearances**I Party : Sh. A J Srinivasan  
AdvocateII Party : Sh. R Narayana  
Advocate**AWARD**

1. The Central Government pursuant to the Order of Hon'ble Court of Judiciary for Karnataka, Bangalore in W P No. 33999/2001 dated 17.08.2005 wherein it set aside the Order of the Ministry declining the reference and directed to refer the dispute *vide* its Order No. L-12012/160/2000-IR(B.1) dated 05.12.2005 made this reference for adjudication on the following schedule:

**SCHEDULE**

"Whether the demand of Shri A Ramesh, former casual workman of State Bank of Mysore, Bangalore is justified in re-employment and regularization of services by the management of State Bank of Mysore? If so, what relief the workman entitled to?"

2. On receipt of the reference registering it in C R 54/2005 when the notices were issued to both the sides both appeared through their respective advocates and I party filed his Claim Statement on 24.4.2006 whereas II party its Counter Statement on 07.07.2006.

3. The I party in its Claim Statement asserts that he started working as an Attender at Gangenahalli Branch of the II party from 15.12.1992 and worked till 01.03.1994 for about 15 months against a Permanent Vacancy and was

working from 09.00 a.m to 04.00 p.m. but he was called as a Temporary Peon and the II Party which on several occasions called for applications for regularisation under various schemes did not regularise his service and that he was not allowed to work from 01.03.1994 in the said branch saying that he had already worked for 250 + 42 days and they cannot allow any person to work for more than 240 days and there after he approached Manager of Jayanagar Shopping Complex of the II party to provide him employment and he was allowed to work there from 12.12.1994 to 03.01.1995 and the payment of salary was made through S B Account bearing No. 11589 and that his Attendance was maintained in Book No. 4086 in pages 84, 85, 86 and that the Branch Manager of that Branch denied him work and thereafter he approached the Manager of the Seshadripuram Branch and then he was given work from 06.04.1994 and in the year 1996 one Sh. B S Dayanand, Field Officer who came on transfer to that branch for extraneous reasons refused him employment from 01.10.1997, thereafter, he sent a representation to the higher officers and as it did not yield any result he made a representation to the Regional Office of the II Party Bank to permit him to resume duty and as that also did not yield any result as a last resort he approached the Labour and Conciliation officer and as the II Party did not co-operate it ended in failure and thereafter as Government refused to refer the matter for adjudication for untenable grounds on his challenge before the Hon'ble High Court of Karnataka it quashed the order of the government and directed to reconsider and thereafter the government on reconsidering the matter referred this dispute for adjudication. *Inter alia*, the II party in its counter Statement contends that the I party was being employed on a Temporary/Casual basis on need basis whenever Permanent Workmen either proceed on leave or remain absent as such he cannot have any claim for absorption or permanent employment and further denying all other averments of the claim statement contended I party having worked in its Gangenahalli Branch during December 1993 to March 1994 for a period of 88 days and in no year he has worked for 240 or more than 240 days there is neither Termination nor Illegal Retrenchment. Thus, it is contended the I Party is neither entitled for re-employment nor regularisation of service as claimed by him.

4. After completion of the pleadings when the I party was called upon to lead evidence, he filed his affidavit in lieu of his evidence reiterating the Claim Statement and examined himself on oath as WW 1 and got exhibited Photostat copy of a letter submitted by him to General Manager, State Bank of Mysore on 15.12.1992 seeking employment; Photostat copy of a letter by Gangenahalli Branch Manager of the II party to the Manager of its Service Branch dated 24.12.1993 deputing the I Party to collect clearing charges; Photostat copy of a certificate issued by Manager, Shopping Complex, Branch Jayanagar, of II Party

certifying I Party having worked in that branch during August 1994 to April 1995 for a period of 178 days as Temporary Peon; Photostat copies of 35 vouchers regarding payments received by him; Photostat copy of the Attendance of the I party for the period from 06.04.1996 to 18.09.1997; a Certificate issued by Manager, Gangenahalli Branch of the II party dated 17.03.1994 certifying I party having worked in that branch as Temporary Peon for 87 days between December 1993 to February 1994; a letter received by I party from General Secretary, Bank of Mysore Employees Union calling upon him to appear and explain in detail to the II party with reference to his letter dated 09.03.1995; a Letter received by the I party dated 05/21.01.1998 from Investigating Officer of the II Party Bank advising him to meet him in connection with his request for appointment as Ex W-1 to Ex W-8 respectively. Inter alia, on behalf of the II Party while filing the affidavit of G Ganganaik, Manager II Party Ganganager Branch examined him on oath as MW 1 and got exhibited Certified extract of daily wages paid to I Party from December 1993 to March 1994; Statement showing the number of days worked by the I Party from October 1994 to February 1995; Statement of Temporary appointment during October 1994 and bonus paid to I Party workman; extract of daily wages paid to I Party from 06.04.1996 to 18.09.1997 with the statement regarding appointment of temporary peons (Sub-staff); General Circular No. 182/2002-03 dated 29.01.2003 regarding management of Records — Policy and Procedure as Ex M-1 to Ex M-4 respectively.

5. With the above pleadings, oral and documentary evidence the argument addressed by both the sides were heard.

6. There being no dispute that service of I party was availed in different branches of the II Party on his request as a Temporary Peon and he failed to place on record any evidence having worked in any block period of 12 months for a period of 240 days or more than 240 days and the learned advocate appearing for the I Party either in the claim statement or in the evidence or in his arguments pointed out any provision/basis under which such a Temporary/Casual Workman is entitled for Re-employment and Regularisation of Services. It is only under Section 25(f) of Industrial Disputes Act, 1947 no workman employed in any industry who has been in continuous service for 240 days can be terminated from service without giving one months' notice in writing indicating the reasons for termination and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice and compensation equivalent to 15 days average pay for every completed year of service or any part thereof in excess of six months and termination without such compliance amounts to Retrenchment. In view of the provisions of the Section 25(f) of the Industrial Disputes Act whenever the provisions of the same are not complied with it would amount to illegal retrenchment and the workman would get a right to ask for reinstatement, backwages etc., but it does not confer any right on the

workman for being permanently absorbed in the establishment. In the present case as already adverted to by me above there being no evidence the I party workman having worked continuously for 240 days in any 12 months block period the provisions of Section 25(f) are not attracted in the present case, therefore, the I party workman failed to make out any case either for his re-employment/reinstatement or for regularization of services in the II party bank. Since the Service of the I Party workman was availed by the II party on need basis whenever the Regular Employees proceed on leave or remain absent for any reasons or the post lie vacant due to transfer not providing him work whenever there is no necessity it does not amount to termination or retrenchment as it is a purely temporary service. In the result, I have arrived at conclusion the demand of Sh. A Ramesh, former casual workman of State Bank of Mysore, Bangalore is justified re-employment and regularisation of service by the management of State Bank of Mysore is not justified and that he is not entitle for any relief. Hence, I pass the following Order:

### ORDER

The reference is rejected holding that the demand of Sh. A Ramesh, former casual workman of State Bank of Mysore, Bangalore is justified re-employment and regularisation of service by the management is not justified and that he is not entitle for any relief.

(Dictated to UDC, transcribed by him, corrected and signed by me on 8th April, 2013)

S.N. NAVALGUND, Presiding Officer

नई दिल्ली, 15 अप्रैल, 2015

**का.आ. 791.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एच एस बी सी के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण दिल्ली के पंचाट (संदर्भ संख्या 112/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10/04/2015 को प्राप्त हुआ था।

[सं. एल-12011/75/2013-आई आर (बी-1)]

सुमीत सकलानी, अनुभाग अधिकारी

New Delhi, the 15th April, 2015

**S.O. 791.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 112/2013) of the Central Government Industrial Tribunal-cum-Labour Court, No-1, Delhi as shown in the Annexure in the Industrial Dispute between the management of the Prathma Bank, and their workman, received by the Central Government on 10/04/2015.

[No. L-12011/75/2013-IR(B-I)]

SUMATI SAKLANI, Section Officer



**ANNEXURE**

**IN THE COURT OF SHRI AVTAR CHAND DOGRA,  
PRESIDING OFFICER, CENTRAL GOVERNMENT  
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT  
NO. 1, KARKARDOOMA COURT COMPLEX,  
DELHI**

**ID No. 112/2013**

Shri Rakesh Kumar Verma,  
R/o Katghar Mehbulla Ganj,  
Near Saini Dharamshala,  
Moradabad, Uttar Pradesh

... Workman

Versus

The Chairman,  
Prathma Bank,  
Head Office,  
Ramganaga Vihar,  
Phase II,  
Moradabad, Uttar Pradesh

... Management

**AWARD**

Relevant facts necessary for disposal of the reference petition received under Section 10 of the Industrial Disputes Act, 1947, are that the workman herein joined services of Prathma Bank on 01.10.1985 and became permanent on 31.12.1986. Later on, he was dismissed from services by the Chairman of the bank *vide* order dated 17.07.1991, which reads as under:

"For the gross misconduct committed by Shri Ramesh Kumar Verma, Messenger (under suspension) Lal Bagh branch be and is hereby dismissed from services of the bank with immediate effect."

2. As per averments, there were two unions in the bank; one was affiliated to AIBEA and the other was sponsored by the bank as a puppet union. The claimant herein was a member of AIBEA, which represents the employees of all nationalized Banks (except SBI). Due to inter union rivalry, the claimant herein was made a scapegoat by the employer on account of so called misbehaviour due to malafide transfer from Lal Bagh Branch, Moradabad to Chander Nagar branch, Moradabad. Claimant, due to illness of his wife, met the Chairman and requested for cancellation/ withdrawal of the said order of transfer, which was termed as misbehaviour by the bank.

3. It is also alleged in the statement of claim that misbehaviour comes under the category of 'minor misconduct' and for such misbehaviour, harsh punishment of dismissal cannot be inflicted by the employer on the workman. There was no independent evidence to prove the charge of misbehaviour. Findings of the disciplinary proceedings were recorded and the order of dismissal was passed without affording any opportunity to the claimant. Thereafter, the claimant sent notice dated 17.09.2012 to the

employer, through speed post, for his reinstatement. However, no reply was given by the bank. Resultantly, a dispute has been raised by the claimant. The claimant also preferred an appeal against the order of dismissal before the Board of Directors of the bank, which was presided; over by the Chairman of the bank, who in a jugglery manner upheld the order of dismissal. It is also alleged that the Assistant Labour Commissioner, Dehradun closed the case in the absence of the claimant on 17.08.2009 and the claimant herein was not properly advised and also sought relief through Civil Court, Moradabad. Thereafter, a writ was also filed before the Hon'ble High Court of Allahabad and an SLP was filed before Supreme Court of India, which was dismissed on 23.04.2012.

4. The Hon'ble Apex Court condemned the delay and held that the claimant is entitled to raise an industrial dispute before the Assistant Labour Commissioner, Dehradun. Wrongful order of dismissal passed by the management is purely arbitray, punitive and bad in law, which was not trailed in the provisions of the Industrial Disputes Act. Lastly, the claimant has made a prayer for his reinstatement and setting aside the order of termination dated 17.07.1991 with all consequential benefits.

5. Reply was filed to the above petition on behalf of the bank, wherein specific preliminary objections were raised regarding raising earlier industrial dispute as well as filing of various appeals by the claimant herein, have been taken. It is alleged that the claimant challenged order of dismissal dated 17.07.1991 before the Hon'ble High Court of Allahabad *vide* Writ Petition No. 34751 of 1992 titled 'Rakesh Kumar Verma vs. Prathama Bank, Moradabad' and the Hon'ble High Court dismissed the writ petition *vide* judgement dated 27.09.2004. Special Appeal was also filed against the said judgement before the Division Bench of Hon'ble High Court *vide* Special Appeal No. 1521 of 2004, which was also dismissed *vide* judgement dated 21.09.2011, holding that no prejudice has been caused to the petitioner nor there is any violation of principles of natural justice. Thereafter, the claimant filed an SLP before the Hon'ble Apex Court, which was dismissed on 23.04.2012. Claimant also attempted to re-open the issue before the Assistant Labour Commissioner, Dehradun *vide* reference No. F-D-8(82)/2012-ALC, and failed there also. Thus principle of res judicata is applicable in the case and it would not be proper to re-open and re-adjudicate the issue which has already been decided by the Hon'ble High Court as well as Hon'ble Apex Court.

6. Against this factual background, this Tribunal *vide* order dated 15.10.2013 framed the following issues:

1. Whether order dated 27.09.2004 passed by High Court of Allahabad, which has been reaffirmed in special appeal as well as special leave application operates as res judicata?
2. As in terms of reference.

7. Since issues were purely legal in nature, as such both the parties were directed by my learned predecessor to file written arguments, which are now on record.

8. I have heard Shri D.K. Santoshi, A/R for the claimant and Shri N.K. Thakur, A/R for the management.

### Findings on issue Nos. 1 and 2

9. Both these issues are being taken up together for the purpose of discussion as they are inter-related and can be conveniently disposed off. It is clear from the record that reference has been made by the appropriate Government to this Tribunal and the same are thus:

"Whether the action of the management of Prathma Bank in terminating the services of Shri Rakesh Kumar without complying with provisions of 25F, G, H of the ID Act, is justified? If so, what relief the workman is entitled to?

10. It is apperent from perusal of the record that the claimant herein was charge sheeted for commission of misconduct and was dismissed from service by Chairman of the bank *vide* order dated 17.07.1997. Order of dismissal clearly shows that the claimant herein was a person who does not want to improve and as such cannot be trusted with any responsibility. He is a subordinate staff member and does not obey orders of his superiors and disregards the same. It is an example of extreme indicipline and highhandedness. It was on account of these circumstances that extreme order of dismissal was passed against the claimant.

11. It is also evident from the pleadings as well as documents on record that the claimant herein filed appeal against order of dismissal and the same was also not accepted.

12. Claimant also challenged order of dismissal passed by the bank by way of writ petition before the Hon'ble High Court of Allahabad titled 'R.K. Verma Vs. Prathma Bank, Moradabad etc.' *vide* Civil Miscellaneous Writ Petition No. 34751 of 1992 and the said writ petition was dismissed on merits by the Hon'ble High Court on 27.09.2004. In the above writ petition, claimant has specifically taken the plea that he was not supplied with copy of the enquiry report or findings of the Enquiry Officer before passing of the order of dismissal. Secondly, submission was also raised that order of dismissal if very harsh in nature. Both these pleas raised by the claimant were rejected by the Hon'ble High Court *vide* judgement dated 27.09.2004. Thereafter, the claimant filed special appeal bearing No. 11521 of 2004 against the judgement of the Single Judge of Hon'ble High Court of Allahabad titled 'Rakesh Kumar Verma *vs.* Prathma Bank Management and others' and the said appeal was also dismissed by the Division Bench of Hon'ble High Court of Allahabad by observing as under:

"Admittedly, the petitioner being class IV employee in the bank, amenable to the jurisdiction of the Special Act know as 'Industrial Dispute (Banking & Insurance Companies) Act, 1949. The suit filed by him was not maintainable in so far as domestic enquiry is concerned. It is settled law that civil court has no jurisdiction in such matters being special Act. Hence the cases cited above by learned counsel for the petitioner, are not applicable in the present facts and circumstances of this case as they pertain to service law.

In the facts and circumstances, the Court is of the view that neither prejudice has been caused nor any violation of principles of natural justice has been committed due to non supply of such inquiry report. For all reasons stated above, the appeal is, accordingly, dismissed."

13. Lastly, the claimant filed SLP under Article 135 of the Consitution of India, which was also dismissed by the Hon'ble Apex Court on 23.04.2012, wherein it was held as under:

"Delay condoned.

Having heard the learned counsel for petitioner and after perusal of the record, we are not inclined to interfere with the impugned judgement.

Special Leave Petition is, accordingly, dismissed."

14. Thus, it is clear that the action of the management is dismissing the claimant herein from service has been upheld by the Hon'ble High Court of Allahabad and SLP against the said judgement also was dismissed by the Hon'ble Apex Court.

15. Now, the question which services for consideration is as to whether the Tribunal can re-open those issues which have already been adjudicated. Doctrine of *res judicata* provides that no court shall try any suit or issue in which matter or substantially in issue in a former suit has been adjudicated by a court of competent jurisdiction. Admittedly, claimant herein was dismissed from service on 17.07.1991 and appeal filed by the claimant before the Appellate Authority of the bank was also dismissed on 29.02.1992. Not only this, as discussed above, writ petitions filed by the claimant was also dismissed by the Hon'ble High Court of Allahabad and finally SLP against the judgement of the Hon'ble High Court of Allahabad filed by the claimant was dismissed on 27.09.2004.

16. It is settled principle in law that when a matter has been decided by a court of competent jurisdiction on merits and the same has attained finality, such matters cannot be re-opened by filing fresh petition before the Tribunal.

17. During the course of arguments, reliance was placed on behalf of the claimant upon the case of *Sarva Shramik Sangh vs Indian Oil Corporation & others* (AIR 2009 SCC 2355). It was case where the first petition was filed under Section 10 of the Industrial Disputes Act seeking relief of evolution of contract labour system in operation of canteen and for absorption of the canteen workers. The said reference was dismissed on merits and thereafter second petition seeking fresh reference under Section 10 of the Act was sought on the grounds as to whether contract between the principal employer and the canteen contractor was sham, nominal and a mere camouflage. It was against this background that the Hon'ble Apex Court held that relief in both the petitions were different and when the parties are different, issues are different and relief sought in both the petitions are different, there is no question of *res judicata*. It also clear that the Hon'ble Apex Court in the above case held that writ of *mandamus* would be issued to the appropriate government to reconsider the refusal to make a reference. Circumstances in the case in hand are entirely different. Relief which is being claimed here has already been claimed by the claimant by filing writ petition before the Hon'ble High Court of Allahabad. Thereafter, the claimant herein also filed special appeal, as mentioned above, before the Hon'ble High Court of Allahabad seeking same relief, *i.e.* regarding setting aside of order of dismissal. Finally, the Hon'ble Apex Court also upheld the judgements of the Allahabad High Court and did not grant any relief to the claimant. Under such circumstances, I am of the considered view that issues which have already been adjudicated and findings regarding the same have been given by the Hon'ble High Court, in that eventuality, this Tribunal is not competent to take a contrary view inasmuch as all these issues are covered by the principle of *res judicata*. Consequently, it is held that the order passed on 22.09.2004 of the Hon'ble High Court of Allahabad are re-affirmed in the appeal as well, operates as *res judicata* between the parties.

18. As a sequel to my discussion hereinabove, it is held that decision of the Hon'ble High Court, Allahabad as affirmed in S.L.P. by Hon'ble Apex Court operate as *res judicata*. Therefore, there is no question of compliance of provisions of Section 25F, G and H by the bank inasmuch as Section 25F and 25G as well as Section 25H has no application when an employee has been charge sheeted and finally dismissed from service. It is not a case of notice of one month as required under Section 25F of the Act. Resultantly, provisions of Section 25G and Section 25H which deal with procedure for retrenchment and re-employment of claimant are not attracted so far as the case of claimant herein is concerned. Finally, no relief can be granted to the claimant. An award is accordingly passed. Let this award be sent to the appropriate Government, as

required under Section 17 of the Industrial Disputes Act, 1947, for publication.

A.C.DOGRA, Presiding Officer

Dated: March 13, 2015

नई दिल्ली, 15 अप्रैल, 2015

**का.आ. 792.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, मुम्बई के पंचाट संदर्भ संख्या (49/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15/04/2015 को प्राप्त हुआ था।

[सं एल-12011/68/2008-आईआर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 15th April, 2015

**S.O. 792.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 49/2009) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, No. 2, Mumbai as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 15/04/2015.

[No. L-12011/68/2008-IR (B-I)]

SUMATI SAKLANI, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL

#### NO. 2, MUMBAI

#### PRESENT

K. B. KATAKE, Presiding Officer

REFERENCE NO. CGIT-2/49 OF 2009

#### EMPLOYERS IN RELATION TO THE MANAGEMENT OF STATE BANK OF INDIA

The Dy. General Manager (I)  
State Bank of India  
H-18, Block-B, Madhuli Building  
Dr. Annie Besant Road  
Shivsagar Estate  
Worli, Mumbai-400 018

AND

#### THEIR WORKMEN

The General Secretary  
State Bank of India Staff Union (Mumbai Circle)  
'Synergy' State Bank of India  
Bandra Kurla Complex  
Kurla (W), Mumbai

**APPEARANCES:**

FOR THE EMPLOYERS : Mr. M. G. Nadkarni  
Advocate.

FOR THE WORKMAN : Mr. M. B. Anchan,  
Advocate.

Mumbai, dated the 31st January, 2015

**AWARD PART-II**

The Government of India, Ministry of Labour & Employment by its Order No. L-12011/68/2008-IR (B-I), dated 20.5.2009 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

"Whether the action of Dy. General Manager, State Bank of India, Worli, Mumbai imposing the punishment of removal from services with superannuation benefit on Shri P.M. Sumara, is legal and justified? If not, what relief the workman is entitled to?"

2. The second party workman was an employee of the first party Bank. It is alleged that the workman has withdrawn more amount than the o/d limit of Rs. 53,500/- Therefore workman was charge-sheeted for overdrawing the amount than the sanctioned o/d limit. The Inquiry Officer held the workman guilty for overdrawing the amount more than the sanctioned limit. On the basis of his report Disciplinary Authority awarded punishment of removal from services with superannuation benefit to the workman. The workman raised industrial dispute. As conciliation failed the Ministry sent the reference to this Tribunal. In Part-I Award, the inquiry was held fair and proper and the findings of the Inquiry Officer declared as not perverse. Thereafter I heard arguments of both the parties on the point of punishment.

3. In this Part-II award following are the remaining issues my determination. I record my findings thereon for the reasons to follow:

Sr. No.	Issues	Findings
2.	Whether punishment of removal from services is shockingly disproportionate to the proved misconduct?	No.
3.	If not, what relief the workman is entitled to?	No relief.
4.	What order?	As per order below.

**REASONS****Issue no. 2 & 3:**

4. On the point of punishment the Id. adv. for the second party submitted that, it is the first misconduct of the workman and there were no allegations of his previous misconduct. He further submitted that the second party workman has not withdrawn amount from the account of any customer of the Bank. On the other hand he has withdrawn the amount under bona-fide belief that o/d limit is upto Rs. 3 lakhs when it was much less than that. He further pointed out that it has also come on record that there was some problem in the software due to which extended o/d limit was shown. The MW-1 (Ex-30) Mr. D.M. Chavan who was the IO has admitted in his cross that workman has withdrawn the amount by cheque and cash also. He has also admitted that cheque was passed as limit was there in the system. The Id. adv. further submitted that the same witness has admitted in his cross that the workman has returned the alleged excess amount before the inquiry started. He has also further admitted in his cross that there is no loss to the Bank. In this backdrop the Id. adv. for the second party workman submitted that the punishment of removal for services is shockingly disproportionate.

5. As against this the Id. adv. for the first party submitted that, once the misconduct is proved, nature of punishment to be imposed is the power of disciplinary authority. Further he submitted that though there were no allegations of previous misconduct, it is not sufficient to take any lenient view. In support of his argument, Id. Adv. resorted to Apex Court ruling in N. Rajarathinam V/s. State of T. N. & Anr. (1996) 10 SCC 371. In para 3 of the judgement the Hon'ble Court on the point observed that:

"While making decision to impose punishment of dismissal from service, if the disciplinary authority had taken the totality of all the facts and circumstances into consideration, it is for the authority to take the decision keeping in view the discipline in the service. Though this Court is empowered to go into the question as to the nature of the punishment imposed, it has to be considered in the peculiar facts and circumstances of each case. No doubt, there is no allegation of misconduct against the officer during his earlier career. But it does not mean that proved allegation is not sufficient to impose the penalty of dismissal from service."

6. The Id. adv. for the first party further submitted that employees in the banking business should be devoted to his work and his integrity should be beyond doubt and he must be honest. Otherwise confidence of public would be impaired. He further submitted that dishonest element should not be allowed to continue in the employment of the Bank. In support of his argument the Id. adv. resorted



to Apex Court ruling in *Union Bank of India v/s Vishwamohan* (1998) 4 SCC 310 wherein on the point Hon'ble court observed that:

"It needs to be emphasized that in the banking business absolute devotion, diligence, integrity and honesty need to be preserved by every bank employee and in particular the bank officer. If this is not observed, the confidence of the public depositors would be impaired."

7. In this respect the Ld. Av. for the second party pointed out that in both the above referred cases the workman therein were found guilty of serious misconduct. Whereas in the case at hand the workman was found guilty merely for overdrawing the amount of o/d than the sanctioned limit. He pointed out that it was due to some fault in the software and the workman has repaid the entire amount. Therefore the ratio in the above cases will not be attracted to the set of facts of the present case.

8. In this respect the Ld. Adv. for the first party submitted that one misappropriation is proved, it is immaterial whether it was of large or small amount and the punishment of dismissal cannot be interfered with. In support of his argument he referred Apex Court ruling in *Municipal Corporation Bharadurgarh V/s. Krishnan Bihari and Ors.* AIR 1996 SC 1249 wherein on the point in para 4 of the judgment the Hon'ble Court observed that;

".....in case involving corruption there cannot be any other punishment than dismissal. Any sympathy shown in such cases is totally uncalled for and opposed to public interest. The amount misappropriated may be small or large, it is an act of misappropriation that is relevant."

9. On the point Ld. Adv. for the first party also cited another Apex Court ruling in *Ganesh Santa Ram Sirur V/s. State Bank of India and Anr.* AIR 2005 SC 314. In para 33 of the judgement Hon'ble Court referred its earlier judgement 2003(3) SCC 605 and reiterated the observations:

"If the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct in such cases has to be dealt with iron hands. Where the person deals with public money or is engaged in financial transactions or act in a fiduciary capacity, the highest degree of integrity and trustworthiness is a must and unexceptionable.

10. The Ld. Adv. also referred another ruling of Apex Court in *State Bank of Bikaner and Jaipur V/s. Nemi Chand Nalwaya* (2011) 4 SCC 584 wherein in para 8 of the judgement Hon'ble Court on the point of termination of services of Bank Employee observed that:

"Whether the punishment of "termination from service" imposed upon a bank employee is shockingly excessive or disproportionate to the gravity of proved misconduct, loss of confidence in the employee will be an important and relevant factor."

In this case Apex Court further observed that;

"A Bank is justified in contending that not only employees who are dishonest but those who are guilty of negligence are not fit to continue in its service."

11. The Ld. Adv. for first party also cited another Apex Court ruling in *Janatha Bazaar South Canara Central Co-operative Wholesale Stores Ltd. and Ors. V/s. Secretary, Shahakari Nookarana Sangh and Ors.* 2000 II LLJ 1395 wherein the Hon'ble Apex Court reiterated its earlier view taken in *Punjab Dairy Development case* (1997) 6 SCC 159. Wherein the Hon'ble Court has observed that;

"In view of proof of misconduct a necessary consequence will be that management has lost confidence that the workman would truthfully and faithfully carry out his duties and consequently the Labour Court rightly declined to exercise the power under Section 11-A of the I.D. Act to grant relief with minor penalty."

12. The Ld. Adv. also cited following ruling on the point of punishment. They are:

- (1) *Suresh Pathrella V/s. Oriental Bank of Commerce* (2006) 10 SCC 572.
- (2) *State Bank of India V/s. Bela Bagchi and Ors.* (2005) 7 SCC 435.
- (3) *Regional Manager, Rajasthan State Road Transport Corporation V/s. Sohanlal* (2004) 4 SCC 218.

13. In all these judgements the Hon'ble Court has held that the Bank employee should discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a bank official. In respect of dishonest employee the Hon'ble Court also held that to continue such an employee in the employment of Corporation by virtue of judicial verdict would be an act of misplaced sympathy which can find no foundation in law of equity.

14. In the light of above cited ruling the Ld. Adv. for the first party further submitted that the disciplinary authority has already shown leniency to the workman and had imposed punishment of removal with all superannuation benefits. Therefore though services of workman are terminated he can get all the superannuation benefits. In the light of these rulings, the request of the workman to take lenient view and to reinstate him in service does not

stand to reasons. In this back drop I decide the issues Nos. 3 and 4 in the negative and proceed to pass the following order:

### ORDER

The reference stands dismissed with no order as to cost.

Date: 31st January, 2015

K.B. KATAKE, Presiding Officer

नई दिल्ली, 15 अप्रैल, 2015

**का.आ. 793.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक ऑफ इंदोर के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचाट (संदर्भ संख्या 186/98) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15/04/2015 को प्राप्त हुआ था।

[सं एल-12012/336/97-आईआर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 15th April, 2015

**S.O. 793.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 186/98) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of State Bank of Indore and their workmen, received by the Central Government on 15/04/2015.

[No. L-12012/336/97-IR (B-I)]

SUMATI SAKLANI, Section Officer

### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/186/98

PRESIDING OFFICER: Shri R.B. PATLE

General Secretary,

Daily Wages Bank Employees Association,

9, Sanwer Road,

Ujjain

...Workman/Union

### Versus

Managing Director,

State A Bank of Indore,

Head Office, 5, Yeshwant Niwas Road,

Indore

...Management

### AWARD

Passed on this 23rd day of March, 2015

1. As per letter dated 10.08.98 by the Government of India, Ministry of Labour, New Delhi, the reference is

received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-12012/336/97-IR(B-1). The dispute under reference relates to:

"Whether the action of the management of State bank of India in terminating the services of Shri Chandrapal Kaushal w.e.f. 05.12.96 and not regularizing him is justified? If not, to what relief the workman is entitled for?"

2. After receiving reference, notices were issued to the parties Statement of claim is submitted by General Secretary of Daily Wage Bank employees Union. Case of Ist party Union is that workman Chandrapal was working at residence of Managing Director Shri M.K. Sinha on wages Rs. 14/- per day for cleaning etc. work for 15.04.1989. The workman was also working at residence of Managing Director Shri Shivshankar, S. Rajgopal and D.C. Sadhi after N.K. Sinha was transferred. Workman was paid weekly wages. He was continuously working from 1989 to 23.9.94. Since 24.09.94 to 30.11.94, workman was appointed on part time basis. The orders were issued time to time. That he was continuously working from 1989 to 11.11.94. Workman was called for interview. A proposal for his appointment was also submitted on 11.11.94 for appointment as sub staff. Workman was examined by Medical officer in Gokuldas Hospital Indore. Workman submits that he paid Rs. 200/- for distribution of sweets for appointment as peon. He further submits that after appointment letter was issued, he was paid Rs. 30/- per day. That 24 daily wage employees working in IInd party Bank are paid Rs. 50/- per day. Workman had submitted application for enhancing his wages. IInd party terminated his service without notice on 05.12.96. He was not paid retrenchment compensation. Termination of his service is in violation of Section 25-F of ID Act, IInd party did not followed policy of last come first go. List of daily wage employees was not displayed. Work of sweeping, cleaning is entrusted to contractors by IInd party. After discontinuation of workman, other persons are engaged. He is not provided employment. Workman is paid bonus for the period 1989 to December, 96. On such ground, Union prays for reinstatement of workman with backwages.

3. IInd party filed Written Statement at page 6/1 to 6/8 opposing relief claimed by Union, Preliminary objection is raised that Shri Ram Nagwanshi so called General Secretary of Union is not working in the Bank. He is not competent to raise dispute. Statement of claim is not filed in prescribed manner rather it is filed in the form of petition is not tenable. IInd party denied that workman was working on daily wages for cleaning sweeping work at residence of Managing Director from 15.04.89, IInd party also denied that workman was working at residence of Managing Director with devotion. It is denied that workman was engaged on daily wages and payment was made to him. It is denied that workman was engaged on daily wages and payment was made to him. It is denied that workman engaged on part time daily wages from 30.11.94 onwards. It is denied that

workman was continuously working with IInd party. It is denied that workman had completed 240 days service. Workman was called for interview for post of sub staff. Interview call was issued to workman out of good faith. Workman could not be appointed. It is denied that workman was medically examined or he paid Rs. 20/- for distribution of sweets, workman is not entitled to protection under Section 25-F of ID Act. There was no question of paying retrenchment compensation. IInd party denies violation of Section 25-G, N of ID Act. It is denied that daily wage employees were working in the Bank in different names have been regularised. IInd party submits that workman is not entitled to any relief.

4. Workman filed rejoinder at Pages 8/1 to 8/2 reiterating its contentions in statement of claim.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

- |   |                     |
|---|---------------------|
| (i) Whether the action of the management of State Bank of India in terminating the services of Shri Chandrapal Kaushal w.e.f. 05.12.96 and not regularizing him is justified? | In Negative         |
| (ii) If not, what relief the workman is entitled to?"   | As per final orders |

#### REASONS

6. Workman filed affidavit of his evidence. In his affidavit, workman have stated that he was initially engaged on daily wages Rs. 15/- per day by Management Shri R.N. Matkar. That he was working at residence of Managing Director Shri M.K. Sinha. Shri Shivshankar, S. Rajagopal and D.C. Sadhi was paid wages Rs. 14/-, 30/-, 35/- per day. He received interview call on 11/11/94. Interview was conducted by Shri Ramesh Chand and other officers. He was examined by Medical Officer. He was terminated without notice from 05.12.96. He was not paid retrenchment compensation. After termination of his service, he was unemployed. In his cross-examination, workman says he worked in the Bank from 15.04.90 to December, 1996. He was working at Bungalow of Managing Director. In 1994, appointment letter was given to him. Post was not advertised. He not submitted application for job. Proposal for appointment of other persons was also submitted as per proposal for appointment, he was not given appointment letter. He was working on daily wages. He has not submitted any application for issuing appointment letter. Workman has reiterated in his cross-examination he was working from 1990 to 1996. Workman corrected that he was working from 15.04.89 to 1996. His family consists of his wife and two children. He is doing labour work getting payment of Rs. 3000 per month. In 1996, he was kept wages Rs. 30/- per day.

7. Evidence of management's witness Deepak Kothari is on the point that workman was not appointed as employee of the Bank. As per record, workman was working in Head office of the Bank doing cleaning, sweeping, etc. work one hour morning, one hour evening. Workman was paid wages for the work done by him. Workman had not completed 240 days on vacant post. Workman was called for interview out of sympathy. Any appointment letter was not issued to him. When it is noticed that workman not completed 240 days work, management's witness in his cross-examination admitted document management's witness in his cross-examination admitted document Exhibit W-1 to W-8. As per Sastri Award and Bipartite Settlement after appointment letter is issued the signature of employees are taken in muster roll. No attendance register is maintained of the daily wage employees. Workman was paid bonus. When workman was called for interview, witness claims ignorance that his affidavit is based on the documents. Any documents are not produced alongwith his affidavit. Management's witness admits contents of para-4 of his affidavit are correct. In para 4 of his affidavit, witness has stated that workman has engaged for one hour morning one hour evening for cleaning sweeping etc. work. Witness of management denies that though workman was successful in interview, he was not given appointment letter. Management's witness claims ignorance about medical examination of workman in Gokuldas Hospital. He also admits that workman was not issued notice. He was not paid retrenchment compensation. Evidence of workman and management's witness is on oath. Management's witness admits work of Ist party in the bank for cleaning sweeping work. Payment of bonus is also admitted by management's witness. Evidence of management's witness is based on document. However management has not produced any documents about working of Ist party in the Bank. As such the management is withholding the material documents from Court. If evidence of workman is considered in the light of evidence in cross-examination of management's witness, I find no reason to disbelieve that workman was working with Bank, his services are terminated without notice. Workman was not paid retrenchment compensation. Therefore I record my finding in Point No. 1 in Negative.

8. Point No. 2 in view of my finding in Point No. 1, termination of workman is illegal for violation of Section 25-F of ID Act, question arise whether he is entitled for reinstatement with back wages. Workman in his cross-examination says he not submitted any application for the post, the post was not advertised. It shows that workman was not appointed following selection process. Therefore workman is not entitled for regularization.

9. Shri Ram Nagwanshi submitted copies of awards passed in R/180/00, R/205/03 & 27/04 passed by this

Tribunal. Each matter is required to be decided on facts and evidence proved by parties. In present case though workman established that he was working with IInd party from 1990 to 1996. Merely as he completed 240 days continuous service reinstatement with backwages could not be allowed. Considering the period of working and wages paid to him, compensation of Rs. 75,000/- would be appropriate. Accordingly I record my finding in Point No. 2.

10 In the result, award is passed as under:—

- (1) The action of the management of State Bank of India in terminating the services of Shri Chandrapal Kaushal w.e.f. 5.12.96 and not regularizing him is not proper.
- (2) IInd party is directed to pay compensation Rs. 75,000/- to the workman within 30 days from the date of notification of award. In case of default, amount shall carry 9% interest per annum from the date of award till its realization.

R.B. PATLE, Presiding Officer

नई दिल्ली, 15 अप्रैल, 2015

**का.आ. 794.**—औद्योगिक विवाद अधिनियम, (1947 1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चैन्नई के पंचाट (संदर्भ सं. 21/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15/04/2015 को प्राप्त हुआ था।

[सं. एल-12012/87/2014-आईआर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 15th April, 2015

**S.O. 794.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 21/2015) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 15/04/2015.

[No. L-12012/87/2014-IR (B-I)]

SUMATI SAKLANI, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM- LABOUR COURT, CHENNAI

Thursday, the 19th March, 2015

**Present** : K.P. PRASANNA KUMARI,  
Presiding Officer

#### Industrial Dispute No. 21/2015

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workman)

#### BETWEEN

Ms. E. Antony Mary : 1st Party/Petitioner  
AND

The Regional Manager : 2nd Party/  
State Bank of India Respondent  
Regional Business Office  
Sundari Complex, 24, Nagercoil Road  
Tirunelveli-627005

#### Appearance:

For the 1st Party/Petitioner : M/s Balan Haridas,  
Advocates  
For the 2nd Party/Respondent : None

#### AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-12012/87/2014-IR (B.I) dated 17.02.2015 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

"Whether the dismissal of service of E. Antony Mary by the Management of State Bank of India, Tirunelveli w.e.f. 31.12.2011 is legal and justified? If not, to what relief the workman is entitled to?"

2. On receipt of the Industrial Dispute this Tribunal has numbered it as ID No. 21/2015.

3. The same petitioner has filed ID 18/2015 before this Court directly regarding the same subject matter. So she does not want to proceed with the referred matter. The counsel for the petitioner as made endorsement stating that the matter may be closed in view of the pendency of ID 18/2015. Accordingly the reference is closed. An award is passed accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 19th March, 2015)

K.P. PRASANNA KUMARI, Presiding Officer

#### Witnesses Examined :

For the 1st Party/Petitioner : None  
For the 2nd Party/Management : None



**Documents Marked  
On the Petitioner's side**

Ex.No.	Date	Description
	Nil	

**On the Management's side**

Ex.No.	Date	Description
	Nil	

नई दिल्ली, 15 अप्रैल, 2015

**का.आ. 795.**—कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा-1 की उप धारा-(3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्वारा 01 मई, 2015 को उस तारीख के रूप में नियत करती है, जिनको उक्त अधिनियम के अध्याय-4(44 व 45 धारा के सिवाय जो पहले से प्रवृत्त हो चुकी है) अध्याय-5 और 6 [धारा-76 की उप धारा-(1) और धारा 77,78,79 और 81 के सिवाय जो पहले ही प्रवृत्त की जा चुकी है] के उपबंध छत्तीसगढ़ राज्य के निम्नलिखित क्षेत्रों के प्रवृत्त होंगे, अर्थात्:

“जिला बलौदाबाजार की तहसील भाटापारा में स्थित राजस्व ग्राम-तरेंगा, पेंडरी, सूमा, खोलवा, कैथी, देवरी, सेमरिया, सूरजपुरा, टेहका, दतरेंगी, दतरेंगा, मधुबन, अकलतरा, परसवानी, कालमीडीह, सुरखी, खपराडीह, बिजराडीह, टिकुलिया, ढाबाडीह, धौराभांटा, गाढ़ाडीह, मंझगाव, बोरसी, बोडतरा कोडापार, मुढीपार, खोखली गोगिया, आलेशुर, सेमरिया, बीजाभाट, राजाढार, खेरी, बोरसी, सेंदरी तथा नगर पालिका भाटापारा।”

[सं. एस-38013/31/2015-एसएस-I]  
अजय मलिक, अवर सचिव

New Delhi, the 15th April, 2015

**S.O. 795.**—In exercise of the powers conferred by sub-section (3) of Section 1 of the Employees State Insurance Act, 1948 (34 of 1948) the Central Government hereby appoints the 1st May, 2015 as the date on which the provisions of Chapter IV (except Sections 44 and 45 which have already been brought into force) and Chapter-V and VI [except Sub-Section (1) of Section 76 and Sections 77, 78, 79 and 81 which have already been brought into force] of the said Act shall come into force in the following areas in the State of Chhattisgarh namely:—

"Revenue villages of Tarenga, Pendri, Suma, Kholwa, Kaithi, Devari, Semariya, Surajpura, Tehaka, Datarenga, Datarengi, Madhuban, Akaltara, Paraswani, Kalamidih, Surakhi, Khaparadih, Bijaradih, Tikuliya, Dhabadih, Dhaurabhatha, Gadadih, Manjhagao, Borasi, Bodtara, Kodapar, Mudipar, Khokhali, Gogiya, Aalesur, Semariya, Beejabhat, Rajadar, Khairi, Borasi, Sendari and Nagar Palika

Bhatapara in the Tehsil Bhatapara, District Balaudabazar."

[No. S-38013/31/2015-SS-I]  
AJAY MALIK, Under Secy.

नई दिल्ली, 15 अप्रैल, 2015

**का.आ. 796.**—कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा-1 की उप धारा-(3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्वारा 01 मई, 2015 को उस तारीख के रूप में नियत करती है, जिनको उक्त अधिनियम के अध्याय-4(44 व 45 धारा के सिवाय जो पहले से प्रवृत्त हो चुकी है) अध्याय-5 और 6 [धारा-76 की उप धारा-(1) और धारा 77,78,79 और 81 के सिवाय जो पहले ही प्रवृत्त की जा चुकी है] के उपबंध छत्तीसगढ़ राज्य के निम्नलिखित क्षेत्रों के प्रवृत्त होंगे, अर्थात्:

“जिला बिलासपुर की तहसील मस्तूरी में स्थित राजस्व ग्राम-खैखारपारा, उसलापुर, खजुरी, हरदाडीह, मचखंडा, पौडी, बम्हनीकला, भौराडीह, बनियाडीह, जुहली, कैभाडीह, हरकपुर, हिंडाडीह, लरगोडा नवागाव, झलमला, कौवाताल, बरेली, सीपत, गुड़ी, करी, दवनडीह, खांडा, परसाही, दर्राभाठा, कौडिया, जांजी, पंछी, देवरी, रांक, तेंदुआ, मुड़पार, एरमसाही, कछार, बेलदुकरी परसदा किसान।”

[सं. एस-38013/32/2015-एसएस-I]  
अजय मलिक, अवर सचिव

New Delhi, the 15th April, 2015

**S.O. 796.**—In exercise of the powers conferred by sub-section (3) of Section 1 of the Employees' State Insurance Act, 1948 (34 of 1948) the Central Government hereby appoints the 1st May, 2015 as the date on which the provisions of Chapter IV (except Sections 44 and 45 which have already been brought into force) and Chapter-V and VI [except Sub-Section (1) of Section 76 and Sections 77, 78, 79 and 81 which have already been brought into force] of the said Act shall come into force in the following areas in the State of Chhattisgarh namely:—

"Revenue villages of Khaikharpara, Usalapur, Khajuri, Haradadih, Machakhanda, Podi Bahmanikala, Bhauradih, Baniyadih, Juhali, Kaibhadih, Harakpur, Hindadih, Largoda, Navagaon, Jhalmala, Kauvatal, Bareli, Sipat, Gudi, Karra, Davandih, Khanda, Parasahi, Darrabhatha, Kaudiya, Janji, Pandhi, Devari, Rank, Tendua, Mudpar, Eramsahi, Kachhar, Beltukari, Parasada kisan in the Tehsil Masturi, District Bilaspur."

[No. S-38013/32/2015-SS-I]  
AJAY MALIK, Under Secy.

नई दिल्ली, 15 अप्रैल, 2015

**का.आ. 797.**—कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा-1 की उपधारा-(3) द्वारा प्रदत्त शक्तियों का प्रयोग

करते हुए, केन्द्रीय सरकार एतद्वारा 01 मई, 2015 को उस तारीख के रूप में नियत करती है, जिसको उक्त अधिनियम के अध्याय-4 (44 व 45 धारा के सिवाय जो पहले से प्रवृत्त हो चुकी है) अध्याय-5 और 6 [धारा-76 की उप धारा-(1) और धारा-77, 78, 79 और 81 के सिवाय जो पहले ही प्रवृत्त की जा चुकी है] के उपबंध तमिलनाडु राज्य के निम्नलिखित क्षेत्रों में प्रवृत्त होंगे, अर्थात्:

केन्द्र	क्षेत्र के अंतर्गत आने वाले निम्न राजस्व गांव
तिरुनेलवेली जिले में नांगुनेरी तालुक नांगुनेरी के उपनगर	1. कडंबोडु वाषवु

[सं एस-38013/33/2015-एसएस-I]

अजय मलिक, अवर सचिव

New Delhi, the 15th April, 2015

**S.O. 797.**—In exercise of the powers conferred by sub-section (3) of Section 1 of the Employees' State Insurance Act, 1948 (34 of 1948) the Central Government hereby appoints the 1st May, 2015 as the date on which the provisions of Chapter IV (except Sections 44 and 45 which have already been brought into force) and Chapter-V and VI [except Sub-Section (1) of Section 76 and Sections 77, 78, 79 and 81 which already been brought into force] of the said Act shall come into force in the following areas in the State of Tamil Nadu namely:—

Centre	Area Comprising the Revenue Villages of
Subrubs of Nanguneri Nanguneri Taluk Tirunelveli District	1. Kadambodu Vazhvu

[No. S-38013/33/2015-SS-I]

AJAY MALIK, Under Secy.

नई दिल्ली, 15 अप्रैल, 2015

**का.आ. 798.**—कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा-1 की उप धारा-(3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्वारा 01 मई, 2015 को उस तारीख के रूप में नियत करती है, जिनको उक्त अधिनियम के अध्याय-4 (44 व 45 धारा के सिवाय जो पहले से प्रवृत्त हो चुकी है) अध्याय-5 और 6 [धारा-76 की उप धारा-(1) और धारा-77, 78, 79 और 81 के सिवाय जो पहले ही प्रवृत्त की जा चुकी है] के उपबंध छत्तीसगढ़ राज्य के निम्नलिखित क्षेत्रों में प्रवृत्त होंगे, अर्थात्:

“नगर निगम परिषद भिलाई-चरौदा तथा उप-तहसील भिलाई-3 जिला दुर्ग में आने वाले सभी क्षेत्र।”

[सं एस-38013/34/2015-एसएस-I]

अजय मलिक, अवर सचिव

New Delhi, the 15th April, 2015

**S.O. 798.**—In exercise of the powers conferred by sub-section (3) of Section 1 of the Employees' State Insurance Act, 1948 (34 of 1948) the Central Government hereby appoints the 1st May, 2015 as the date on which the provisions of Chapter IV (except Sections 44 and 45 which have already been brought into force) and Chapter-V and VI (except Sub-Section (1) of Section 76 and Sections 77, 78, 79 and 81 which have already been brought into force) of the said Act shall come into force in the following areas in the State of Chhattisgarh namely:—

"All the areas falling within the Municipality Council Bhilai-Charoda and all the areas falling within the Sub-Tehsil Bhilai-3, District Durg."

[No. S-38013/34/2015-SS-I]

AJAY MALIK, Under Secy.

नई दिल्ली, 15 अप्रैल, 2015

**का.आ. 799.**—कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा-1 की उप धारा-(3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्वारा 01 मई, 2015 को उस तारीख के रूप में नियत करती है, जिसको उक्त अधिनियम के अध्याय-4 (44 व 45 धारा के सिवाय जो पहले से प्रवृत्त हो चुकी है) अध्याय-5 और 6 [धारा-76 की उप धारा-(1) और धारा-77, 78, 79 और 81 के सिवाय जो पहले ही प्रवृत्त की जा चुकी है] के उपबंध आन्ध्र प्रदेश राज्य के निम्नलिखित क्षेत्रों में प्रवृत्त होंगे, अर्थात्:—

“आन्ध्र प्रदेश राज्य के अनंतपुर जिले के हिन्दुपुर मंडल में आने वाले राजस्व गांव की सीमा के अन्तर्गत क्षेत्र-मलुगुरु (हैमलेट गांव एम० बीरपल्ली, पेद्दागुडपल्ली, चिन्ना गुडंपल्लि, रंगापुरम और नंदमुरी नगर) और मनेसमुद्रम।”

[सं एस-38013/35/2015-एसएस-I]

अजय मलिक, अवर सचिव

New Delhi, the 15th April, 2015

**S.O. 799.**—In exercise of the powers conferred by sub-section (3) of Section 1 of the Employees' State Insurance act, 1948 (34 of 1948) the Central Government hereby appoints the 1st May, 2015, as the date on which the provisions of Chapter IV (except Sections 44 and 45 which have already been brought into force) and Chapter-V and VI [except Sub-Section (1) of Section 76 and Sections 77, 78, 79 and 81 which have already been brought into force] of the said Act shall come into force in the following areas in the State of Andhra Pradesh namely:—

"All the areas falling within the limits of the revenue villages of Maluguru (Hamlets M. Beerapalli, Peddagudempalli, Chinna Guddampalli, Rangapuram and Nandamuri Nagar) and Manesamudram of Hindupur Mandal of Ananthapur District in State of Andhra Pradesh."

[No. S-38013/35/2015-SS-I]

AJAY MALIK, Under Secy.

नई दिल्ली, 15 अप्रैल, 2015

**का.आ. 800.**—कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा-1 की उप धारा-(3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्वारा 01 मई, 2015 को उस तारीख के रूप में नियत करती है, जिसको उक्त अधिनियम के अध्याय-4 (44 व 45 धारा के सिवाय जो पहले से प्रवृत्त हो चुकी है) अध्याय-5 और 6 [धारा-76 की उप धारा-(1) और धारा-77, 78, 79 और 81 के सिवाय जो पहले ही प्रवृत्त की जा चुकी है] के उपबंध आन्ध्र प्रदेश राज्य के निम्नलिखित क्षेत्रों में प्रवृत्त होंगे, अर्थात्:—

“आन्ध्र प्रदेश के प्रकाशम जिले के राजस्व सीमा के सिंगारायकोंडा मंडल के गांव पुराना सिंगारायकोंडा, कल्कीवाया, पकाला, मुलगुंटपाडु, कनुमल्ला, सनमपुडी, बिंगिनापल्ली, सोमराजुपल्ली अधीन आने वाले सभी क्षेत्र”

[सं एस-38013/36/2015-एसएस-I]

अजय मलिक, अवर सचिव

New Delhi, the 15th April, 2015

**S.O. 800.**—In exercise of the powers conferred by sub-section (3) of Section 1 of the Employees' State Insurance Act, 1948 (34 of 1948) the Central Government hereby appoints the 1st May, 2015, as the date on which the provisions of Chapter IV (except Sections 44 and 45 which have already been brought into force) and Chapter-V and VI [except Sub-Section (1) of Section 76 and Sections 77, 78, 79 and 81 which have already been brought into force] of the said Act shall come into force in the following areas in the State of Andhra Pradesh namely:—

"All the areas falling in the limits of revenue village of old Sinarayakonda, Kalkivaya, Pakala, Mulaguntapadu, Kanumalla, Sanampudi, Binginapalli, Somarajupalli in Singarayakonda Mandal of Prakasam District of Andhra Pradesh."

[No. S-38013/36/2015-SS-I]

AJAY MALIK, Under Secy.

नई दिल्ली, 16 अप्रैल, 2015

**का.आ. 801.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार नेशनल इंस्टिट्यूट ऑफ फार्मास्यूटिकल एजुकेशन रिसर्च बिहार के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, मुजफ्फरपुर के पंचाट (संदर्भ संख्या 03/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16/04/2015 को प्राप्त हुआ था।

[सं एल-42025/04/2015-आईआर (डीयू)]

पी० के० वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 16th April, 2015

**S.O. 801.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No.03/2013) of the Industrial Tribunal, Muzaffarpur now as shown in the Annexure in the Industrial Dispute between the employees in relation to the management of the National Institute of Pharmaceutical Education and Research, Bihar and their workman, which was received by the Central Government on 16/04/2015.

[No.L-42025/04/2015-IR(DU)]

P. K. VENUGOPAL, Desk Officer

**ANNEXURE****OFFICE OF THE INDUSTRIAL TRIBUNAL,  
MUZAFFARPUR**

**Present:** Shri Braj Kishore Pd. Gupta,  
Presiding Officer,  
Industrial Tribunal, Muzaffarpur

**Industrial Dispute Case No. 03 of 2013**

Santosh Kumar Mishra S/o Late Ram Nagina Mishra,  
resident of Village-Bidupur, P.O. Rampur (Bind Lal), P.S.  
Ekma Distt.- Chapra (Saran), Bihar

.....Applicant/Workman

**Versus**

1. M/s. Management of M/s. National Institute of Pharmaceutical Education and Research, Office situated at EPIP Campus, Industrial area (Hajipur), P.O.+P.S. Hajipur, Distt.-Vaishali-844101, (Bihar).

**Through**

2. Registrar, M/s National Institute of Pharmaceutical education and research, office situated at EPIP Campus, Industrial Area (Hajipur), P.O+P.S.-Hajipur, Distt Vaishali-844101, (Bihar).
3. Director M/s Rajendra Memorial Research Institute of Medical Sciences, Agankuan, Patna-800007, (Bihar).

....Management/Opposite Parties

The 27th February, 2015

**AWARD**

- (1) This case has been brought by the worker Shri Santosh Kumar Mishra, for quashing and setting aside the order dated 22.04.2013 passed by the management OP's by which he has been terminated from the service of National Institute

- of Pharmaceutical Education and Research, EPIP Campus, Industrial Area, Hajipur, Vaishali. (In short (NIPER).
- (2) The brief history of this case is that NIPER published an advertisement in employment News Paper of 03.09 May, 2008 for the post of Store Keeper besides other posts. In pursuance of advertisement the petitioner workman applied for the post of Storekeeper, as he is an ex-serviceman of Indian Air Force. After interview he had been selected for the post of the storekeeper on the fixed salary of Rs. 12,000/- (Twelve Thousand) on a contractual basis for a period of one year, which can be renewed every year depending upon performance and mutual consent. Accordingly he join on the post of Store Keeper at NIPER, Hajipur on 23.01.2009.
  - (3) On the day of his joining he also entered into a contract of service on the stamp paper of Rs. 10/- (Ten) with director of the Institute (NIPER) and started working from the post of the Storekeeper of the Institute and worked till 21.04.2013.
  - (4) It is further case of the workman is that the management started discriminating with him in enhancement of his increment of wages, than he raised objection against the management, which made annoince to the management and they started targeting him. Lastly to victimige and harass him, with malafied intention and ulterior motive, illegally terminated him from the service of the NIPER on 22/23-04-2013, without any compliance of the statutory provisions of the I.D. Act 1947 and rules and Regulations framed their under, which is also against the natural justice.
  - (5) It is further stated that before termination of his service no any charges of misconduct or any other charges every leveled against him, nor he has been given one month notice or equivalent to one month pay at the time of termination of his service. Which was mandatory and one fine morning he has been terminated. Therefore against his illegal termination he raised objection before conciliation officer cum Regional Labour Commissioner (Central), Patna on 15.05.2013, but the said conciliation officer did not taken any step for reconciliation of the dispute with the management OP's and after waiting more than forty five days, finding no alternative filing this case to set aside the illegal order of termination and consequential relives before this Industrial Tribunal having competent jurisdiction to adjudicate his dispute.
  - (6) On the other hand the OP's appeared and filed their written statement alleging therein that NIPER does not come under the perview of and under the jurisdiction of this Tribunal, because the educational institutions scientific research or training institutions are exempted in the meaning of Industries of Section 2 (J) of the I.D. Act 1947. This institute was constituted by the ministers of chemical and fertilizers, presently department of Pharmaceutical of the Government of India to impart education to post graduate Courses, MS. Pharma & M. Pharma by Extra ordinary Gazette notification No. S.O.—1633(E) dated 6th September, 2007. After establishment of NIPER Hajipur in the year 2007, no post of any employee teaching or non-teaching have been sanctioned save and except the post of Director as yet. The institute is running under the mentorship of Rajendra Memorial Research Institute of Medical Sciences, Agamkuan, Patna. As an interim arrangement, the Govt. of India permitted the institute to employee skeleton staff contractully for the work.
  - (7) The petitioner workman was appointed contractually on a fixed pay of Rs. 12,000/- (Twelve Thousand) per month for one year on 23.01.2009. This tenure of engagement was subject to extension with mutual consent and based on performance. Accordingly the service of the worker/petitioner was extended till 22.04.2013. On expiry of the extended period of extension/engagement, the petitioner was relieved from the service of the Institute (NIPER) on 22.04.2013 which was accepted by him and on the same day an application has been filed by the petitioner workman for extension of his service on compassionate ground before the Director of the institute, in which it is urged that his son and daughter are pursuing B.Tech. and B.B.A at New Delhi and to facilitate in payment of their fees his service tenure may be extended till his joining in Bihar Jail service. The said prayer of the petitioner was turn down by the director NIPER.
  - (8) It is further submitted that the petitioner was never terminated from the service of the institute; rather he was relieved from the institute on completion of his tenure. Therefore no question arisen for payment of terminal benefit and reinstatement because he was not relieved or terminated prematurely.
  - (9) It is further submitted that the petitioner filed this case after concealment of the relevant fact. The petitioner raised his dispute before the Assistant Regional Labour Commissioner (Central), Patna.



On notice this OP's institute appeared and filed his reply, but the petitioner workman did not appear to contest the case then the Assistant Regional Labour Commissioner disposed of the claim of the petitioner without any relief, but this fact has not been disclosed by the petitioner in his petition.

- (10) Hence, this petition (case) has no merit and fit to be dismissed.
- (11) from the pleadings of the parties following issues shall arise for consideration of this Tribunal—
  - (i) Whether this Tribunal has jurisdiction to entertain and adjudicate this dispute raised by the petitioner workman or not?
  - (ii) Whether the institute of the OP's comes under the purview of the I.D. Act 1947?
  - (iii) Whether the petitioner workman is entitled to reinstatement and also entitled to his back wages?
  - (iv) To what relief or relieves the petitioner is entitled?

### Findings

#### Issue No.-(i)

- (12) Before entering into the finding I would like to mention the evidence adduced by the parties oral and documentary. The applicant examined A.W.-1 as himself and supported the case and claim as made by him. He also exhibited six documents in support of his case and claim. Ext. A is the letter of the OP's NIPER, dated 16th December, 2008, by which he had been directed to appear for interview.
- (13) Ext. A/1 is the letter of the OP's NIPER, dated 09th January, 2009, by which the applicant was offered to join as a store keeper.
- (14) Ext. A/2 is the letter of the OP's NIPER dated 23rd January, 2009, which is the appointment letter of the applicant Shri Santosh Kumar Mishra.
- (15) Ext. A/3 is the office order of the OP's NIPER dated 05th June, 2012, by which Mishra was allowed additional 20% D.A.
- (16) Ext. A/4 is the letter dated 23rd April, 2013 of the OP's NIPER by which Shri Mishra was relieved from the duty of the NIPER.
- (17) Ext. A/5 is the letter of Shri Mishra dated 15th May, 2013 addressed to Regional Labour Commissioner (Central), Maurya Lok Complex, 2nd Floor, Room No. 16-17, Dakbangla Road, Patna, by which Shri Mishra requested the regional Labour Commissioner for conciliation and other action.

- (18) The OP's NIPER also adduced one witness namely Shri Vijay Kumar Karn, in support of his case and claim as O.W.-1 and also exhibited four documents. Out of whom Ext.-1 is contract paper of service of Shri Mishra dated 23rd January, 2009, by which he entered into a contract with the OP's.
- (19) Ext. 2 is the letter dated 22nd April, 2013 sent to the OP's NIPER by Shri Mishra for extension of his tenure of service on compassionate grounds.
- (20) Ext. 4 is the letter of appointment dated 23rd January, 2009 by which Shri Mishra was appointed as storekeeper of the OP's NIPER.
- (21) Ext. 3 is the letter dated 09th January, 2009 by which Shri Mishra was offered to join on the post of storekeeper of the NIPER.
- (22) Now coming to the above formulated issue No.1, whether this Tribunal has power and Jurisdiction to entertain the present case or not?
- (23) The learned counsel of the NIPER raised this question very strongly by submitting that according to definition of the Industry U/s Section 2 (J) of the I.D. Act 1947.

Industry means any business trade, undertaking, manufacture or calling of employers and includes any calling service, employment, handicraft or industrial occupation or avocation of workman but the OP's is the educational institution runs under the direction and order of the Central Government for Pharmaceutical education and research to impart education to Post Graduate course M.S. Pharma & M. Pharma in Biotechnology, Pharmacy Practice etc. Therefore it is clear that the NIPER does not produce any goods or business and from the plain reading of the definition of Industry the educational, scientific, research or training institutions are excluded. Hence the provisions of I.D. Act. 1947 does not come into play. Hence the present dispute is not an industrial dispute. Therefore this Tribunal which was constituted for adjudication of Industrial dispute but the present dispute is not the industrial dispute. Hence this tribunal has no jurisdiction to entertain and adjudicate the present case of the worker Santosh Kumar Mishra.

- (24) On the other hand the learned Counsel of the worker submitted that it is settled Principle of Law by the Constitution bench of our Hon'ble Apex Court in Bangalore water supply and sewerage board's case, reported in AIR 1978 S.C. 548 in which our lords of Hon'ble Apex Court made a comprehensive and elaborate definition of the meaning of Industry. The more teaching staff of

an educational institution were declared workman within the I.D. 1347.

- (25) It is relevant to mention here that the term industry was defined by our lordships as defined under section 2 (J) of I.D. Act 1947. It has a wide important and if they fulfill the triple test (i) systematic activities, (ii) Organized by co-operation between the employer and employee, (iii) for production and distribution of goods, services calculated to satisfy human want and wishes on a large scale, it comes within the preview of industry. Absence of profit motive or gainful objective is irrelevant even the venture of the public, Joint private or other sector. The decisive test is the nature of activity with special emphasis on the employer and employee relation.
- (26) Now moving to a consideration that educational institutions are an industry. If the triple test of systematic activity co-operation between employer and employee and production of goods and services were alone to be applied to a University, a college, a research institute or teaching institution will be an industry.
- (27) From the discussion made above and as decided by our Lordship of Hon'ble Apex Court, I am of the clear view that the non teaching staff of an educational institution are worker within the meaning of section 2(J) of the I.D. Act. 1947, and they have full right to knock the door of an Industrial Tribunal. Therefore I have no hesitation to hold that this tribunal has full jurisdiction to entertain and adjudicate the dispute raised by any worker of an educational and research institution. Hence this issue is decided in favour of the petitioner worker and against the OP's.

#### Issue No. - (ii)

- (28) Whether the institute of the OP's comes under the preview of the I.D. Act 1947, I would like to refer that while deciding the issue no. (i) I have discussed this fact also as to the educational institutions and research institute are also comes within the preview of an Industry, specially the non teaching staff. Who have rendering supportive services. The teachers are indulge in educating the students and researchers but the non teaching staffs are managing the other affairs of the institutions, obviously they are not delivering lectures but without management the institutions could not run and achieve their goals, Our Apex Court very elaborately considered this aspect of the employees (non-teaching) of an educational institutions and comes to a conclusion that the non-teaching staff of the educational

institutions are very much coming within the ambit of industry.

- (29) Hence I have no hesitation to hold, that the present petitioner (workman) was rendering service in the institution of NIPER as a storekeeper which is a non-teaching staff was in the management of the institute. Therefore, the institute of the OP's is an industry within the meaning of I.D. Act. 1947 and comes under the ambit of I.D. Act 1947.

#### Issue No. (iii)

- (30) Whether the petitioner workman is entitled to reinstatement with full back wages is concern. It is admitted fact of both the parties that the petitioner was appointed as a Store keeper on a fix salary of Rs. 12,000/- (Twelve thousand) for a period of one year and he join on the post of Store keeper of the NIPER on 23.01.2009. His appointment was for one year *i.e.* up to 22.01.2010 but the petitioner was given extension up to 22.04.2013 and relived on 23.04.13.
- (31) The learned counsel of the applicant very much gave emphasis that after rendering service for a period of 240 days the workman cannot be retrenched without giving prior notice of one month or in-lieu of notice one month salary and also the applicant is entitled to benefit of Section 25(F) of the I.D. Act. 1947. But in the instant case the OP's retrenched the applicant without giving any notice prior to retrenchment or giving one month salary in-lieu of the notice and the provisions of the 25 (F) of the I.D. Act. 1947 has also not been complied. Hence the applicant is fully entitled to his back wages with benefit of 25 (F), as his retrenchment was wrong illegal and against the provisions of the I.D. Act, 1947.
- (32) As against this the learned counsel of the OP's fairly submitted that the appointment of the petitioner was conditional one. He was appointed on a fix salary for one year to manage the work of Store Keeper of the NIPER, but due to exigency his tenure was extended up to 22.04.13. It is relevant to submit that no post of Store Keeper is sanctioned by the Govt. of India neither any post of Store keeper is still running in the institute. The petitioner himself executed a bond on the date of his joining that he never claim permanent employment and abide the provisions of Rule and Regulations of the institute as enforce time to time and he can be terminated by the institute during the period of contract by giving one month's notice at any time during service without any cause assigned. Therefore when the institute (NIPER) was not in the need of the petitioner he

was relived as a contract period was expired long ago. Hence there was no need to give any notice prior to releasing of the petitioner. It is also relevant to note that after reliving the present petitioner no one was or is appointed on the post of storekeeper, as there is no sanction post of storekeeper in the NIPER. Not only this the present petitioner had accepted his reliving gladly and gave an application to the director of the NIPER on the very day of the relieving on compassionate ground to extend his tenure till he join on the post of assistant jailor in Bihar Jail Service, as he has been selected for that post. Hence the NIPER had not committed and vilated any term and condition of the petitioner. Therefore the petitioner is not entitled to any relief by this tribunal.

- (33) Now I would like to enter into the definition of the word "Retrenchment" as per I.D. Act, 1947 which runs as follows:—

"Retrenchment means the termination but the employer of the service of a workman for any reason what so ever, otherwise than as a punishment inflicted by way of disciplinary action but does not include.

(a) Voluntary retirement of a workman.

(b) Retirement of a workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf.

(bb) Termination of the service of the workman as a result of the non renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated unfer a stipulation in that behalf contained therein.

(c) Termination of the service of a workman on the ground of continued ill health."

- (34) From the above definition of the retrenchment as defined in the I.D. Act, 1947. It is clear that when the workman will be presumed to be retrenched. As per proviso (bb) it is clear that a workman cannot be treated retrenched or terminated. When the contract of employment was denied to be renewed or after expiry of the service contract held between employer and employee.

- (35) In the present case the workman was appointed on the post of Store keeper for a term of one year on a fixed salary of Rs. 12,000/- i.e. for 23.01.2009 to 22.01.2010. In proof of the contract a contract paper was also signed by the workman on the

same date of joining but the workman was continued in service upto 22nd April, 2013. On that day he was relieved. The workman claiming that he was retrenched from his service without any notice or *in-lieu* thereof one month salary and also without giving any relief U/s 25(F) of the I.D. Act. 1947.

- (36) In this respect I have gone through with Ext. 1 to 4 of the OP's Management. From perusal of the opening line of Ext. 2 the petitioner workman himself admitted that.

"My tenure of service is expiring on 22nd April, 2013". This admission of the workman clearly denotes that he had not been retrenched or terminated. Here one thing is also important, that the post of storekeeper was created for one year without any sanction for the convenience of the NIPER, which may be renewed for subsequent years subject to the suitability and mutual consent' on a fixed salary of Rs. 12,000/- (Twelve Thousand) and this fact was clearly mentioned in the advertisement and appointment letter of the workman dated 23.01.2009. The workman petitioner after read over and accepted the term applied for the post and at the time of appointment executed a bond on stamp paper. Therefore the submission of the workman that he had been terminated from the service by the OP's by forcibly cannot be accepted.

- (37) Here one thing is also apparent, that the workman was appointed for one year and as per terms of appointment had to be relieved on 22.01.2010, but he was allowed to continued upto 22nd of April, 2013, without any document of contract in black and white. If it is supposed that on expiry of the contract of the petitioner on 22.01.2010 his service tenure was extended for further one year and latter on likewise, then he should be relieved on 22.01.2013, but he was allowed to continue his service further and suddently he was relieved on 22nd of April, 2013, as per contract paper executed by the petitioner workman on 23rd of January, 2009, at Para number 7 (seven), it has been clearly assigned that—

"The service of appointee may, during the period of contract, be terminated by the institute at any time by one calender month's notice in writing given at any time during service under this contract withou any cause assigned. Provided always the institute may *in-lieu* of the notice herein provided give the appointee a sum equivalent to the amount of pay fixed for one month."

But this term of the contract was not abide by the management at the time of the relieving of the workman. It is true that after completion of one year, the workman was relieved then this term has no leg to stand but when the management allowed the workman to continue for further period without any written contract then it was the duty of the management to abide the term and condition of the contract. The workman was not releaved after completion of one year rather he was relieved in the middle of the year.

- (38) Hence from the discussion made above and from the evidence of the OP's W-1 Para-6 Shri Vijay Kumar Karn it also apparent that the tenure of the workman Shri Mishra was extended for one year after completion of one year. This also show that the tenure of Shri Mishra was extended for one year on 22.01.2013, but he was relieved during continuation of his service without any notice or one month salary *in lieu* thereof. This fact was also accepted by the workman in his deposition at Para no. 1. None of the parties filed any iota of document to show that the workman petitioner was appointed otherwise or any other terms and condition.
- (39) Therefore I am of the opinion that the petitioner workman was not terminated or retrenched forcibly, by the management of NIPER, rather he has been relived from his pots as per term and condition precedent in the advertisement, contract paper and appointment letter, but it is also true that he had been relieved in the middle of extended tenure without any prior notice, which is against the term and conditions agreed between the parties and also as per clause (a) of 25 (F) of the I.D. Act. 1947.
- (40) Hence it is ordered to the OP's to pay one month's salary (1st drawn) *in-lieu* of notice to the workman Shri Shantosh Kumar Mishra within one month from the date of pronouncement of this award along with 10% interest thereon from the date of relieving. Failing which the law will take its own course.

#### Issue No. (iv)

The petitioner workman is not entitled to any other relief or relieves accordingly this issue is decided.

Written and corrected by me.

BRAJ KISHORE PD. GUPTA, Presiding Officer

नई दिल्ली, 16 अप्रैल, 2015

**का.आ. 802.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एच एम टी वाच फैक्ट्री बेंगलोर के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक अधिकरण एवं श्रम न्यायालय बंगलुरु के पंचाट (संदर्भ संख्या C.R.No. 04/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16/04/2015 को प्राप्त हुआ था।

[सं० एल-42011/117/2014-आईआर (डीयू)]

पी० के० वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 16th April, 2015

**S.O. 802.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. C.R. No. 04/2015) of the Central Government Industrial Tribunal Cum Labour Court, Bangalore now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the HMT Watch Factory, Bangalore and their workmen, which was received by the Central Government on 16/04/2015.

[No. L-42011/117/2014-IR (DU)]

P. K. VENUGOPAL, Desk Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 8th April, 2015  
PRESENT : Shri S. N. Navalgund,  
Presiding Officer

#### C R No. 04/2015

<b>I Party</b>	<b>II Party</b>
The President, HMT Watch Factory Employees Union, No 1, D-1, HMT Watch Factory Colony, HMT Post, BENGALURU-13	The General Manager, HMT Watch Factory, Jalahalli, BENGALURU-560013

#### Appearances

**I Party** : Shri M. S. Siddaraju,  
President  
**II Party** : Shri C. S. Eshwar Kudi,  
Deputy Manager (HR)

#### AWARD

1. The Central Government vide Order No. L-42011/117/2014-IR(DU) dated 02.01.2015 in exercise of the powers conferred by Clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of Industrial Dispute Act, 1947 has



made this reference for adjudication with following Schedule:

### SCHEDULE

"Whether the action of the management of HMT Watch Case Factory, Bangalore, postponing the promotion of 11 workman detailed in Annexure A-2, to the Industrial Dispute dated 15.05.2013 raised by the HMT watch Factory Employees Union is legal and justified? If not, what relief the workmen are entitled for?"

2. On receipt of reference while registering it in CR 04/2015 when notices were issued today Sh. C. S. Eshwar Kudi, Deputy Manager (HR) for II party appeared and filed a Memo the dispute in respect of promotion relating to the 11 workmen involved in this dispute being amicably resolved the matter be closed. Similarly, the President of the I Party Union as well filed Memo this dispute in respect of 11 workmen relating to their promotion being settled by the management the reference may be closed. In view of the Memo filed by both the sides reporting amicable settlement the reference is liable for rejection as settled out of court. Accordingly, I pass the following :

### ORDER

The reference is rejected by virtue of the memo of Settlement filed by the I Party as well as the II Party.

(Dictated to UDC transcribed by him, corrected and signed by me on 8th April, 2015)

S. N. NAVALGUND, Presiding Officer

नई दिल्ली, 16 अप्रैल, 2015

**का.आ. 803.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कमिश्नर म्युनिसिपल कारपोरेशन ऑफ़ डेल्ही के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, डेल्ही के पंचाट (संदर्भ संख्या 75/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16/04/2015 को प्राप्त हुआ था।

[सं एल-42011/165/2012-आईआर (डीयू)]

पी० के० वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 16th April, 2015

**S.O. 803.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No. 75/2013) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Commissioner, Municipal Corporation

of Delhi and their workmen, which was received by the Central Government on 16/04/2015.

[No. L-42011/165/2012-IR(DU)]

P. K. VENUGOPAL, Desk Officer

### ANNEXURE

### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II KARKARDOOMA COURT COMPLEX, DELHI

Present : Shri Harbansh Kumar Saxena

ID No. 75/13

Sh. Gangey  
North Ghonda,  
Delhi-110053

### Versus

The Commissioner,  
MCD, Delhi-110006.

### EX-PARTE AWARD

The Central Government in the Ministry of Labour vide notification No. L-42011/165/2012-IR(DU) dated 07.03.2013 referred the following Industrial Dispute to this Tribunal for adjudication:—

"Whether the Workman Sh. Gangey, S/o Late Sh. Chhajjan is entitled to benefits of the ACP Scheme at par with his counterparts working in DDA and if so to what relief is he entitled and what directions are necessary in this respect?

On 19.07.2013 reference was received in this Tribunal. Which was register as I.D. No. 75/13 and claimant was called upon to file claim statement within fifteen days from date of service of notice. Which was required to be accompanied with relevant documents and list of witnesses.

Workman filed claim statement on 23.12.2013. Where-in he alleged as follows:—

### BACK GROUND OF THIS DISPUTES:—

1. That the workman Sh. Gangey S/o Sh. Chhajjan Mason was joined into the employment of Delhi Development Authority w.e.f. 4.12.1976 into the pay scale 210-290 & was given higher pay scale of Rs. 225-350 w.e.f. 17.7.1984 which was revised w.e.f. 1.1.1986 into the pay scale of Rs. 950-1500 under IVth Pay Commissioner Report & the services of workman aforesaid was transferred from DDA to MCD w.e.f. 20.05.1995 & was posted under ZE(W), Sh. S. Zone.

2. That the workman aforesaid is entitle 1st ACP w.e.f. 9.8.1999 into the pay scale of Rs. 5000-7000 after completing 12 years. But the Management of MCD granted IInd ACP into the pay scale of Rs. 3200-4900 w.e.f. 4.12.2000 & denied

to grant 1st ACP into the proper pay scale, which is illegal & with malafide intentionally.

3. That the action as taken by the Management is wholly illegal, bad, unjust with malafide intentionally amongst other reasons thereof:

- i. That the workman hostile with discrimination as juniors were granted demanded pay scale but the workman aforesaid did not get benefits which were privileged to the same categories to others inspite several requests to the Senior Officials but they completely denied to grant 1st ACP w.e.f. 9.8.99 & IInd ACP after completing 12 Years Services.
- ii. That it is amounts to sheer exploration of labour.
- iii. That the Management violative Articles 14, 16 & 39(d) of the constitution of India.
- iv. That the Management of MCD total violative Rules and Regulations under which workman placed lower pay scale in place as DDA & also MCD granted higher pay scale under ACP scheme to same categories.
- v. That the MCD granted same categories workmen vide letter dated 16.10.2003 as 1st ACP 4000-6000 & IInd ACP 4500-7000.
- vi. That the Management of MCD granted ACP to workmen which were comes into the Categories 'C' for Rs. 3250-4590 & 4000-6000 in 1st & IInd. ACP which was received vide order dated 21.2.2005, 12.04.2005, 21.10.2003, 14.12.04 & 23.09.2003 respectively into the Ist. ACPRs. 4000-6000 & IInd ACPRs. 4500-7000 to other workmen.
- vii. That the Delhi Development Authority granted higher pay scale under ACP Scheme to same categories vide office order dated 11.8.2006 which are higher pay scale in place of MCD workmen.
- viii. That the workman requested several time to officials of MCD but they did not considered my grievance which was completely denied.

4. That the workman Sh. Gangay is entitled 1st. ACP into the pay scale of Rs. 4000-6000 & IInd ACP under pay scale of Rs. 5000-8000 from 9.8.99 & 04.12.2000 along with all consequential benefits.

5. That a demand notice was given vide communication dated 5.8.09 by Regd. Post to the Commissioner, MCD, Town Hall, Chandni Chowk, Delhi-110006 which was duly received but no reply was given in that case the dispute was file before the authority to start conciliation proceedings and same refer to this Hon'ble Court for adjudication.

It is therefore, prayed to this Hon'ble Court to called upon to the management to granted proper pay scale to the workman Shri Gangay on 1st ACP Rs. 4000-6000 from 9.8.99 & IInd ACP of Rs. 5000-8000 without further delayed if the management failed to granted proper pay scale the Award in favour of workman may kindly be granted along with interest.

It is further prayed kindly granted litigation under Section 11(7) under the Rules.

When management has not filed W.S. inspite of several opportunities. Then this tribunal on 18.6.2014 closed the right fo filing W.S. by management and passed order to proceed Ex-parte against management. As well as fixed 4.08.2014 for Ex-Parte evidence of workman.

Workman in support of his case filed his affidavit on 3.02.2015. Wherein he mentioned as follows:—

1. That the despondent was join into the employment of DDA 04.12.1976 as Mason into the pay scale of Rs. 210-290 which was revised into the pay scale Rs. 225-350 w.e.f. 17.7.1984. The same scale was revised under IVth pay commission report w.e.f 01.01.1986 into the pay scale of Rs. 950-1500 with usual allowances.
2. That services of workman was transferred from DDA to MCD w.e.f. 20.05.1995 and the workman was posted in Shahadra, South Zone under Z.E. (W).
3. That the management of MCD granted ACP on first financial up gradation was given into the pay scale of Rs. 3200-4900 which was lesser rumination while the workman was entiltted 1st up gradation was due into the pay scale of Rs. 4000-6000. And IInd up.gradation was due Rs. 5000- 8000 w.e.f. 09.08.1999 and 04.12.2000 respectively.
4. That Management also revised to ACP to same category into the pay scale of Rs. 4000-6000 and Rs. 5000-8000 but same-was denied to the deponent.
5. That the Management of Delhi Development Authority have been given on 1st ACPRs. 4000-6000 and on IInd ACPRs. 5000-8000.
- 6- That I'm entitled 1st ACP w.e.f. 09.08.1999 into the pay scale of Rs. 4000-6000 and Rs. 5000-8000 on IInd ACP w.e.f. 04.12.2000 alongwith all consequential benefits either monitory or non-monitory as are privileged by the Management of MCD and also by the DDA alongwith market int. from the due date on the due amount.
7. That the deponent has been given legal demand notice to the Commissioner, MCD on dated 05.08.2009 vide Regd. AD post which was duly

received in his Office is Ex. W.W. 1/1, The Management replied demand notice is Ex. W.W. 1/2. The copy of Statement filed before the C.O. is Ex. W.W. 1/3, copy of Replied filed by the Management is Ex. W.W. 1/4, The copy of Rejoinder filed before the C.O. is Ex. W.W. 1/5. The copy of orders which were issued by the Management for granting ACP are Ex. W.W. 1/6, The copy of order under which the MCD rectified same scale by issuing fresh orders under which higher scale granted the same categories like Masons, Fitters Pump Operators etc. Ex. W.W. 1/7. The management of DDA issued Orders from ACP to all employees as 1st. ACP for Rs. 4000-6000 and IInd. ACP for Rs. 5000-8000 are Ex. W.W. 1/8. The copy of services under which was transferred to the DOA to MCD is Ex. W.W. 1/9.

It is therefore, prayed to the Hon'ble Court to passed an Award in favour of Deponent with Holding that on the 1st ACP from 9/8/99 in to the pay scale of Rs. 4000-6000 & on IInd, ACP from 4.12.2000 into the pay Scale of Rs. 5000-8000 alongwith 18% simple inst. On the due amount may kindly be given in the law of IInd for natural justice. It is prayed accordingly.

Workman tendered his affidavit on 3.2.15. His statement is as follows:—

I tender may affidavit in evidence which is exhibit Ex. W.W. 1/A and which bears my signature at point A & B. I rely my documents which are Ex. W.W. 1/1 to Ex. W.W. 1/9.

XXXXXX None on behalf of Management present to cross-examined the witness. Hence cross-examination is marked nil.

Thereafter, Ld. A/R of Sh. Gangey, closed the evidence of workman on the instruction of workman. As case was proceeded ex-parte against management so I fixed 25/2/15 for ex-parte arguments of workman.

On 25.2.2015 I have heard the 'Oral arguments of Sh. R.M. Sharma, Ld. A/R for the workman.

In the light of contention of Ld A/R for the workman I perused the pleadings of claim statement as well as evidence by way of affidavit of workman exhibit W.W. 1/A and annexed documents Ex. W.W. 1/1 to Ex. W.W. 1/9.

Perusal of contents of para 5 of Claim statement. Which are as follows:—

"That a demand notice was given vide communication dated 5.8.09 by Regd. Post to the Commissioner, MCD, Town Hall, Chandni Chowk, Delhi - 110006 which was duly received but no reply was given in that case the dispute was file before the authority to start conciliation proceedings and same refer to this Hon'ble Court for adjudication.

It is therefore, prayed to this Hon'ble Court to called upon to the management to grated proper pay scale to the workman. Sh. Gangey on 1st ACP Rs. 4000-6000 from 9.8.99 & IInd ACP of Rs. 5000-80d0 without further delayed if the management failed to granted proper pay scale the Award in favour of workman may kindly be granted along with interest.

It is further prayed kindly granted litigation under Section 11(7) under the Rules".

Which makes it crystal clear that though aforesaid contents workman alleged that management has not replied his notice dated 5.8.2009. So, aforesaid allegation of workman is contrary to his doumentary evidence as workman placed reliance on annexed documents of affidavit: Which is exhibit Ex.1/2. This document is reply dated 9.9.2009 of demand notice of Sh. Gangey. which contains following contents:—

**Subject:** Reply of demand notice served by Sh. Gangey, Mason through Sh R.M. Sharma.

Kindly refer to legal demand notice served upon Commissioner MCD by you on behalf of Sh. Gange, Mason, Point wise reply is as under:

1. The workman Sh. Gange was appointed as mason in DDA on 04.12.1976 in pay scale of Rs. 210-290. He was given higher pay scale of Rs. 225-350 w.e.f. 17.07.1994 which was revised in the 4th CPC to Rs. 950-1400 & Rs. 3050-4590 under 5th CPC 2nd Financial up-gradation has been given in the pay scale of Rs. 3200-4900 w.e.f. 04.12.2000 duly approved by Competent Authority and order issued by A.O./Engg./HQ(Copy enclosed). M.C.D. has nothing to do with the scale being given the DDA.
2. The claim of employee cannot be entertained as he has been given two financial up-gradation.
3. No comments.
4. No comments allowances are being given as per rules prevailing in M.C.D.
5. He was granted:—  
1st Financial up gradation w.e.f. 17.7.1984.  
2nd Financial up gradation w.e.f. 04.12.2000.

With all financial benefits which are due as per rule prevailing in M.C.D.

E.E.M.I Sh.S.

Workman also placed reliance on annexed documents of affidavit in evidence of workman. Which is WW1/4.

It is written statement on behalf of management/MCD before conciliation officer, Govt. of India, 4th Floor, Jeevan Deep Building, Parliament Street. Which contains following contents:—

1. That workman Sh. Gangey was appointed as mason in DDA on 04.12.1976 in pay scale of Rs. 210-290. He was transferred in MCD on 20.05.1995 and he was given higher pay scale of Rs. 225-350 w.e.f. 17.07.1984 which was revised in the 4th CPC to Rs. 950-1400 & 3050-4590 under 5th CPC 2nd financial up-gradation has been given in the pay scale of Rs. 3200-4900/- w.e.f. 04.12.2000 duly approval by Competent Authority and order issued by A.O./Engg./HQ(copy enclosed). MCD. has nothing to do with the scale being given in DDA.
2. The claim of employee can not be entertained as he has been given two financial up-gradation.
3. No Comments.
4. No. Comments, allowances are being given as par rules prevailing in M.C.D.
5. He was granted.

1st Financial up-gradation w.e.f. 17.7.1984.

2nd Financial up-gradation w.e.f. 04.12.2000.

Instant Industrial Dispute has been referred to this Tribunal for adjudication by Ministry of Labour on 7.3.2013. Schedule of reference contains following questions of determination:—

"Whether the Workman Sh. Gangey, S/o Late Sh. Chhajjan is entitled to benefits of the ACP Scheme at par with his counterparts working in DDA and if so to what relief is he entitled and what directions are necessary in this respect?"

Which in itself indicates that burden to prove aforesaid questions of determination lies on workman. In support of his case workman only adduce his evidence alongwith few Photostate copies of the documents. Moreover, he is alleging that he served demand notice on management but management has not replied but he relies on reply of demand notice sent by management to workman which exposes the falsehood of workman on the aforesaid point workman also relies on the contents of Written statement filed by management before Conciliation Officer. Which in itself disintitling the workman to any relief. In this background evidence of workman is short of required evidence. Rather evidence of workman supports to the case of management. In this background this tribunal has no option except to decide the reference against workman and in favour of management. Which is accordingly decided and claim statement is accordingly dismissed.

Ex-parte award is accordingly passed.

Dated: 20.3.2015.

HARBANSH KUMAR SAXENA, Presiding Officer

नई दिल्ली, 16 अप्रैल, 2015

**का.आ. 804.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कमिशनर म्युनिसिपल कारपोरेशन ऑफ दिल्ली के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय 2, दिल्ली के पंचाट (संदर्भ संख्या 13/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16/04/2015 को प्राप्त हुआ था।

[सं० एल-42011/138/2013-आईआर (डीयू)]

पी० के० वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 16th April, 2015

**S.O. 804.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (ID. No. 13/2014) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Commissioner, Municipal Corporation of Delhi and their workman, which was received by the Central Government on 16/04/2015.

[No. L-42011/138/2013-IR (DU)]

P. K. VENUGOPAL, Desk Officer

#### ANNEXURE

#### CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL- CUM-LABOUR COURT, GROUND FLOOR, KARKARDOOMA COURT COMPLEX, DELHI

**Present:** Shri Harbansh Kumar Saxena

**ID No. 13/2014**

The President, MCD General Mazdoor Union,  
C/o Room No. 95,  
Barrack No. 1/10, Jam Nagar House, New Delhi-110011.

#### Versus

The Commissioner,  
MCD/Civic Centre, Minto Road, New Delhi.

#### EX-PARTE AWARD

The Central Government in the Ministry of Labour vide notification No. L-42011/138/2013-IR(DU) dated 07.02.2014 referred the following industrial dispute to this Tribunal for adjudication:

"Whether Sh. Rajinder S/o Late Sh. Ram Sahai is entitled to the status of Chaudhary in the pay scale of Rs. 3050=4590 w.e.f 01.01.1991 revised from time to time alongwith all consequential benefits? If so, what directions are necessary in this respect?"

On 18.2.2014 reference was received in this Tribunal. Which was register as I.D. No. 13/2014 and calimant was called upon to file claim statement with in fifteen days from



date of service of notice. Which was required to be accompanied with relevant documents and list of witnesses.

After service of notice workman/claimant filed claim statement on 6.6.2014. Wherein he stated as follows :

1. That the appropriate Govt. i.e. National Capital Territory of Delhi referred the following dispute for industrial adjudication before the industrial Tribunal :

"Whether Sh. Rajinder S/o Late Sh. Ram Sahai is entitled to the status of Chaudhary in the pay scale of Rs. 3050-4590 w.e.f. 01.03.1991 revised from time to time alongwith all consequential benefits? If so, what directions are necessary in this respect?

2. That Sh. Rajinder S/o Sh Ram Sahai has been allotted the work of Chaudhary with effect from 01.03.1991 by the competent officer(s) of Horticulture Department and was posted under Green Park Zone to work under Dy. Director of Horticulture, but he has been denied the pay scale of Chaudhary revised from time to time. His qualification is 5th. It is also submitted that qualification is not prescribed for the promotion of Chaudhary.

3. That the management of MCD has fixed the different pay scales to their employees including Mali, Chaudhary etc. in accordance to their job and non-grant of proper pay scale of Chaudhary to Sh. Rajinder is forced labour and the management is indulging in unfair labour practice.

4. That the workman Sh. Rajinder has got the payment in lower pay scale of Mali Rs. 2550-3200 revised from time to time but he is denied the pay scale of Rs. 3050-4590 with effect from 01.03.1991 and revised from time to time and this action of the management is also illegal as well as unjustified.

5. That the duty of Mali is presently of an unskilled workman (according to the Award the duty to Mali is classified with semi-semi skilled workman) but the duty of a Chaudhary is a skilled nature of job being a Group "C" employee and there are different pay scales for both the categories. Copy indicating the names of officiating Chaudhary issued by the officer of Horticulture concerned is annexed as Annexure—A and he name is appearing at Sl. No. 19 of Annexure-A. The said list was duly prepared by the concerned zone of the Horticulture and submitted the same to the officer of Director (Horticulture), MCD.

6. The Hon'ble High Court of Delhi in the matter of Jai Chand Vs. MCD (CW 6514/2001) has disapproved the non-payment *vide* order dated 2.5.2003 for the post of Chaudhary for taking the work from him for the said post.

7. That in compliance of orders of Hon'ble High Court dated 2.5.2003 the management of MCD. Horticulture Department, New Delhi has also issued the implementation of the said order *vide* its office order No. ADC (Hort.)/AO

(Hort.)/DA-VII/05/457 dated 4.3.2005. Copy of the said order issued by the management is annexed as Annexure-B.

8. That the recent judgment of Division bench of Hon'ble High Court of Delhi have settled the matter by the recent judgment of Hon'ble Division bench of Hon'ble High Court in the matter MCD Vs. Sultan Singh & Ors. W.P. (C) No. 7947/2010 and the same stand has been taken by the Hon'ble High court in Writ-Petition No. 5550 of 2010 titled MCD Vs. Mahipal S/o Late Dalel Singh C/o MCD General Mazdoor Union and reiterated the decision of Division Bench in the matter MCD Vs. Sultan Singh *vide* its judgment on 27.07.2011. The same is reproduced as under:—

"Mr. Varun Prasad, counsel appearing for the respondent submits that the present petition filed by petitioner is squarely covered by the recent judgment of the Hon'ble Division Bench of this Court in MCD Vs. Sh. Sultan Singh & Oprs W.P. (C) No. 7947/2010.

Mr. Amita, Counsel appearing for the petitioner/MCD submits that the present petition the petitioner has challenged the order dated 4th February, 2010 passed by the Industrial Tribunal held that the workman who was performing duties on the post of Garden Chaudhary is entitled to the pay scale of Garden Chaudhary in force from time to time *w.e.f.* June, 1987. Learned Tribunal also took a view that respondent would not be entitled to regularization as he lacked requisite qualification. The operative para of the said judgment in Sultan Singh's case (Supra) of the Hon'ble Division Bench is reproduced as under:

"28. Considering the entire facts and circumstances it is apparent that the claim of the respondents have always been that they should be paid the difference in pay of Mali/Chowkidar and the Garden Chaudhary as they were made to work on the post of Garden Chaudhary whereas the petitioner had first denied that they worked the Garden Chaudhary, then took the plea that the Assistant Director (Horticulture) was not competent to ask the respondents to work as Garden Chaudharies and that the respondents cannot be appointed to the post of Garden Chaudharies and that the respondents cannot be appointed to the post of Garden Chaudharies in accordance with the recruitment rules. There is no doubt that respondents are not claiming appointment to the post of Garden Chaudhary contrary to rules or that some of them not having the requisite qualifications are entitled for relaxation.

29. In the entirety of facts and circumstances therefore, the learned counsel for the petitioner has failed to make out any such grounds which will impel this Court to exercise its jurisdiction under Article 226 of the Constitution to set aside the orders of the Tribunal dated 29th January, 2010

and 7th October, 2010 as no illegality or unsustainability or perversity in the orders of the Tribunal has been made out.”

30. The writ petition is, therefore, dismissed. Parties are left to bear their own cost”

"Since the issue involved in the present case is squarely by the aforesaid judgment of the Hon'ble Division Bench of this Court, therefore, the present petition filed by the petitioner does not subsist and is accordingly dismissed.

The impugned order dated 4.2.2010 is accordingly upheld and the petitioner MCD is directed to comply with the directions passed by the Tribunal in the said order."

9. The Hon'ble High Court of Delhi followed the judgment of Sh. Sultan Singh as mentioned hereinabove and dismissed the Management W.P.(C) No. 5550/2010 titled Municipal Corporation of Delhi Vs. Mahipal S/o Late Dalel Singh.

10. That many of the similar situated workmen (Mali & Chowkidar) who were performing their duty as acting Chaudhary and they were granted the pay scale of Chaudhary from the date when they were asked to perform the duty of higher post and industrial Tribunal awarded the higher wages for the work of Chaudhary from the date of their initially acting and performing the duty of Chaudhary.

11. That the Management challenged the order dated 27.07.2011 of Division Bench of Hon'ble High Court in Writ Petitioner (C) No. 7947/2010 in the matter MCD Vs. Sultan Singh & Ors. before the Hon'ble Supreme Court of India by Special Leave to Appeal (C) No. S20069/2011 and the said Special Leave Petition has dismissed and withdrawn on 9.4.2012. This workman is also similarly situated doing the work of Chaudhary is entitled similar benefits. Copy of the order of Hon'ble Supreme Court dated 9.4.2012 is also annexed as Annexure-C.

12. That the Division Bench of Hon'ble High Court in the matter of MCD Vs. Sultan Singh & Ors. Decided all the doubts and allegations made by the management of MCD in their detailed judgment holding the grant of higher wages of Chaudhary to those Mali/Chowkidar who have been performing the responsibility of the higher post from the date when they were directed to work the work of Chaudhary and treated them as Ad-hoc Chaudhary.

13. That after dismissal of said Special leave Petition the management did not comply the order of payment of higher post salary to the malis who had been discharging the duty of Garden Chaudhary. The Division bench of Hon'ble

High Court of Delhi in Writ-Petition (Civil), 53/2012 titled Sultan Singh & others *vide* its order dated 15.03.2013 directed the management to pay the wages for higher post of salary to be paid who were performing the duty of Garden Chaudhary. Copy of the said order is annexed as Annexure—E.

14. That in compliance of the order of Hon'ble High Court of Delhi dated 15.3.2013 in the matter of Sultan Singh and Ors. Vs. W.P. (C) No. 5453/2012 the management of MCD allowed the equal pay for equal work attached to the post of Garden Chaudhary in compliance of the order of Hon'ble High Court of Delhi dated 15.3.2013 and the applicants were allowed the payment the payment when they were discharging the duty of higher post (Garden Chaudhary).

15. That the action of management in not granting the pay scale of Garden Chaudhary of Rs. 3050-4590 *w.e.f.* 16.06.1997 and revised from time to time alongwith all consequential benefits to Sh. Rajinder is unfair, illegal as well as unjustified.

16. That the management is duty bound to pay the scale to Sh. Rajinder in the scale of Chaudhary with effect from 01.03.1991 alongwith all consequential benefits.

17. The copy of sponsorship is annexed as Annexure-D with the statement of claim as the workman is the Member of MCD General Mazdoor Union (Regd. & Recognized) and copy of the Registration is annexed as Annexure-E, copy of the letter of negotiate with the management is annexed as Annexure-F and copy of the list of Office bearers is annexed as Annexure-G.

In view of the above, this Hon'ble Tribunal may kindly allow the salary of Garden Chaudhary as the workman has been performing their duty in the pay scale of Rs. 3050-4590 *w.e.f.* 01.03.1991 alongwith all consequential benefits.

When, management has not filed W.S. inspite of several opportunities. Then this Tribunal on 31.07.2014 closed the right to filing W.S. by management and passed order to proceed Ex-parte against management. As well as fixed 3.09.2014 for Ex-parte evidence of workman.

Sh. Rajinder in support of his case produce himself as WW1 and tendered his affidavit on 3.9.2014. His statement is as follows:—

I tender my affidavit for evidence which is Ex.WW1/A. My signature is appearing at point A and B alongwith documents Ex.WW1/1 to WW1/5.

XXXXXX None on behalf of Management present to cross-examined the witness. Hence cross-examination is marked nil.

Thereafter, Ld. A/R of Sh. Rajinder, closed the evidence of workman on the instruction of Sh. Rajinder. As case was proceeded ex-parte against management. So, I fixed 30.10.2014 for ex-parte arguments of Sh. Rajinder.

On 30.10.2014 I have heard the oral arguments of Sh. B.K. Prasad, Ld. A/R for the workman.

In the light of contentions of Ld. A/R for the workman I perused the pleadings of claim statement questions of determination mentioned in the schedule of reference and uncontroverted ex-parte oral evidence of workman including contents of documents Ex.WW1/1 to WW1/4 which shows that burden to prove question of determination No. 1 lies on workman. I also perused the contents of citations submitted on behalf of the workman.

Out of aforesaid citations following principle laid down by their Lordship of Hon'ble Supreme Court in case of Selva Raj Vs. Lt. Governor of Island, Port Blair 1999 LAB. I.C. 598 applies with full force in the instant case:—

"Employee ordered to look upon duties of higher post employee worked on higher post though temporarily and in an officiating capacity is not entitled to salary attached to higher salary, however, shall not amount to promotion."

On the basis of aforesaid discussion I am of considered view that workman could not prove that he is entitled to the status of Chaudhary in the pay scale of Rs. 3050-4590 *w.e.f.* 01.03.1991. He could prove only that workman worked on higher post of Chaudhary though temporarily since 01.03.1991 till now. So, he is entitled to salary attached to Chaudhary post since 01.03.1991 till he continued as Chaudhary as he had actually worked.

On the basis of aforesaid discussion I am of considered view that reference is liable to be partly decided in favour workman and against management and claim statement is liable to be partly allowed. Which is accordingly decided. Award is accordingly passed and Management is directed to pay aforesaid difference of pay to workman Sh. Rajinder within two months after expiry of available remedy against this Award.

Dated : 31.1.2015

HARBANSH KUMAR SAXENA, Presiding Officer

नई दिल्ली, 16 अप्रैल, 2015

**का.आ. 805.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कमिशनर म्युनिसिपल कारपोरेशन ऑफ दिल्ली के प्रबंधतंत्र संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय 2, दिल्ली के पंचाट

(संदर्भ सं० 14/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16.04.2015 को प्राप्त हुआ था।

[सं० एल-42011/139/2013-आईआर (डीयू)]

पी.के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 16th April, 2015

**S.O. 805.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 14/2014) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Delhi now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of the Commissioner, Municipal Corporation of Delhi and their workmen, which was received by the Central Government on 16/04/2015.

[No.L-42011/139/2013-IR (DU)]

P. K. VENUGAPAL, Desk Officer

#### ANNEXURE

#### CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL- CUM-LABOUR COURT-II, KARKARDOOMA COURT COMPLEX, DELHI

**Present:** Shri Harbansh Kumar Saxena

#### ID No. 14/2014

The President, MCD General Mazdoor Union,  
C/o Room No. 95,  
Barrack No. 1/10, Jam Nagar House,  
New Delhi-110011.

#### Versus

The Commissioner,  
MCD, Civic Centre, Minto Road,  
New Delhi-110006.

#### Ex-Parte Award

The Central Government in the Ministry of Labour *vide* notification No. L-42011/139/2013(IR(DU) dated 07.02.2014 referred the following industrial Dispute to this Tribunal for adjudication:—

"Whether Sh. Radha Charan S/o Late Jaidev is entitled to the status of Chaudhary in the pay scale of Rs. 3050-4590 *w.e.f.* 01.04.1990 revised from time to time alongwith all consequential benefits? If so, what directions are necessary in this respect?

On 18.2.2014 reference was received in this Tribunal. Which was register as I.D. No. 14/2014 and claimant was called upon to file claim statement with in fifteen days from

date of service of notice. Which was required to be accompanied with relevant documents and list of witnesses.

**After service of notice workman/claimant filed claim statement on 6.6.2014. Wherein he stated as follows:—**

1. That the appropriate Govt. *i.e.* National Capital Territory of Delhi referred the following dispute for Industrial adjudication before the industrial Tribunal:—

"Whether Sh. Radha Charan S/o Late Sh. Jaidev is entitled to the status of Chaudhary in the pay scale of Rs. 3050-4590 *w.e.f.* 01.03.1990 revised from time to time alongwith all consequential benefits? If so, what directions are necessary in this respect?

2. That Sh. Radha Charan S/o Late Sh. Jaidev has been allotted the work of Chaudhary with effect from 01.04.1990 by the competent officer (s) of Horticulture Department and was posted under Green Park Zone to work Under Dy. Director of Horticulture, but he has been denied the pay scale of Chaudhary revised from time to time. His qualification is 8th Pass and belongs to OBC category. It is also submitted that qualification is not prescribed for the promotion of Chaudhary.

3. That the management of MCD has fixed the different pay scales to their employees including Mali, Chaudhary etc. in accordance to their job and non-grant of proper pay scale of Chaudhary to Sh. Radha Charan is forced labour and the management is indulging in unfair labour practice.

4. That the workman Sh. Radha Charan has got the payment in lower pay scale of Mali Rs. 750-940 revised from time to time but he is denied the pay scale of Rs. 950-1500 and revised to Rs. 3050-4590 with effect from 01.04.1990 and revised from time to time and this action of the management is also illegal as well as unjustified.

5. That the duty of Mali is presently of an unskilled workman (according to the Award the duty to Mali is classified with semi-skilled workman) but the duty of a Chaudhary is a skilled nature of job being a Group "C" employee and there are different pay scales for both the categories. Copy indicating the names of officiating Chaudhary issued by the officer of Horticulture concerned is annexed as Annexure-A and he name is appearing at Sl. No. 32 of Annexure-A. The said list was duty prepared by the concerned

zone of the Horticulture and submitted the same to the officer of Director (Horticulture), MCD.

6. The Hon'ble High Court of Delhi in the matter of Jai Chand Vs. MCD (CW 6514/2001) has disapproved the non-payment *vide* order dated 2.5.2003 for the post of Chaudhary for taking the work from him for the said post.

7. That in compliance of orders of Hon'ble High Court dated 2.5.2003 the management of MCD, Horticulture Department, New Delhi has also issued the implementation of the said order *vide* its office order No. ADC (Hort.)/AO (Hort) DA-VII/05.457 dated 4.3.2005. Copy of the said order issued by the management is annexed as Annexure-B.

8. That the recent judgement of Division bench of Hon'ble High Court of Delhi have settled the matter by the recent judgement of Hon'ble Division bench of Hon'ble High Court in the matter MCD Vs. Sultan Singh & Ors W.P.(C) No. 7947/2010 and the same stand has been taken by the Hon'ble High Court in Writ-Petition No. 5550 of 2010 titled MCD Vs. Mahipal S/o Late Dalel Singh C/o MCD General Mazdoor Union and reiterated the decision of Division Bench in the matter MCD Vs. Sultan Singh *Vide* its judgement on 27.07.2011. The same is reproduced as under:—

"Mr. Varun Prasad, counsel appearing for the respondent submits that the present petition filed by petitioner is squarely covered by the recent judgment of the Hon'ble Division Bench of this Court in MCD Vs. Sultan Singh & Ors. W.P.(C) No. 7947/2010.

Mr. Amita, counsel appearing for the petitioner/MCD submits that the present petition the petitioner has challenged the order dated 4th February, 2010 passed by the Industrial Tribunal held that the workman who was performing duties on the post of Garden Chaudhary is entitled to the pay scale of Garden Chaudhary in force from time to time *w.e.f.* June, 1987. Learned Tribunal also took a view that respondent would not be entitled to regularization as he lacked requisite qualification. The operative para of the said judgement in Sultan Singh's case (Supra) of the Hon'ble Division Bench is reproduced as under:

"28. Considering the entire facts and circumstances it is apparent that the claim of the respondents have always been that they should be paid the difference in pay of Mali/Chowkidar and the Garden Chaudhary as they were made to work on the post of Garden



Chaudhary whereas the petitioner had first denied that they worked the Garden Chaudhary, then took the plea that the Assistant Director (Horticulture) was not competent to ask the respondents to work as Garden Chaudharies and that the respondents cannot be appointed to the post of Garden Chaudharies in accordance with the recruitment rules. There is no doubt that respondents are not claiming appointment to the post of Garden Chaudhary contrary to rules or that some of them not having requisite qualifications are entitled for relaxation.

29. In the entirety of facts and circumstances therefore, the learned counsel for the petitioner has failed to make out any such grounds which will impel this Court to exercise its jurisdiction under Article 226 of the Constitution to set aside the orders of the Tribunal dated 29th January, 2010 and 7th October, 2010 as no illegality or un-sustainability or perversity in the orders to the Tribunal has been made out."

30. The writ petition is, therefore, dismissed. Parties are left to bear their own cost"

Since the issue involved in the present case is squarely by the aforesaid judgement of the Hon'ble Division of this Court, therefore, the present petition filed by the petitioner does not subsist and is accordingly dismissed.

The impugned order dated 4.2.2010 is accordingly upheld and the petitioner MCD is directed to comply with the directions passed by the Tribunal in the said order."

9. That Hon'ble High Court of Delhi followed the judgement of Sh. Sultan Singh as mentioned hereinabove and dismissed the Management W.P.(C) No. 5550/2010 titled Municipal Corporation of Delhi Vs. Mahipal S/o Late Dalel Singh. Copy of the said judgement is annexed as Annexure-C.

10. The many of the similar situated workmen (Mali & Chowkidar) who were performing their duty as acting Chaudhary and they were granted the pay scale of Chaudhary from the date when they were asked to perform the duty of higher post and Industrial Tribunal awarded the higher wages for the work of Chaudhary from the date of their initially acting and performing the duty of Chaudhary.

11. That the Management challenged the order dated 27.7.2011 of Division Bench of Hon'ble High Court

in Writ Petitioner (C) No. 7947/2010 in the matter MCD Vs. Sultan Singh & Ors. before the Hon'ble Supreme Court of India by Special Leave of Appeal (C) No. S20069/2011 and the said Special Leave Petition has dismissed and withdrawn on 9.4.2012. This workman is also similarly situated doing the work of Chaudhary is entitled similar benefits. Copy of the order of Hon'ble Supreme Court dated 9.4.2012 is also annexed as Annexure-D.

12. That the Division Bench of Hon'ble High Court in the matter of MCD Vs. Sultan Singh & Ors. decided all the doubts and allegations made by the management of MCD in their detailed judgement holding the grant of higher wages of Chaudhary to those Mali/Chowkidar who have been performing the responsibility of the higher post from the date when they were directed to work the work of Chaudhary and treated them as Ad-hoc Chaudhary.

13. That after dismissal of said Special Leave Petition the management did not comply the order of payment of higher post salary to the malis who had been discharging the duty of Garden Chaudhary. The Division bench of Hon'ble High Court in Writ-Petition (Civil), 54, 53/2012 titled Sultan Singh & others *vide* its order dated 15.03.2013 directed the management to pay the wages for higher post of salary to be paid who were performing the duty of Garden Chaudhary. Copy of the said order is annexed as Annexure-E.

14. That in compliance of the order of Hon'ble High Court of Delhi dated 15.3.2013 in the matter of Sultan Singh and Ors. Vs. W.P.(C) No. 5453/2012 the management of MCD allowed the equal pay for equal work attached to the post of Garden Chaudhary in compliance of the order of Hon'ble High Court of Delhi dated 15.3.2013 and the applicants were allowed the payment when they were discharging the duty of higher post (Garden Chaudhary).

15. That the action of management is not granting the pay scale of Garden Chaudhary of Rs. 3050-4590 *w.e.f.* 16.06.1997 and revised from time to time alongwith all consequential benefits to Sh. Radha Charan in unfair, illegal as well as unjustified.

16. That the management is duty bound to pay the scale to Sh. Randha Charan in the scale of Chaudhary with effect from 01.04.1990 alongwith all consequential benefits.

17. The copy of sponsorship is annexed as Annexure-F with the statement of claim as the workman is the Member of MCD General Mazdoor Union (Regd. & Recognized) and copy of the Registration is annexed as Annexure-G, copy of the letter of negotiate with the management is annexed as Annexure-H and copy of the list of Office bearers is annexed as Annexure-I.

In view of the above, this Hon'ble Tribunal may kindly allow the salary of Garden Chaudhary as the workman has been performing their duty in the pay scale of Rs. 3050-4590 *w.e.f.* 01.04.1990 alongwith all consequential benefits. When management has not filed W.S. inspite of several opportunities. Then this Tribunal on 31.07.2014 closed the right to filing W.S. by management and passed order to proceed Ex-parte against management. As well as fixed 3.09.2014 for *Ex-parte* evidence of workman.

Sh. Radha Charan in support of his case produce himself as WW1 and tendered his affidavit on 3.9.2014. His statement is as follows:—

I tender my affidavit for evidence which is Ex.WW1/A. My signature is appearing at point. A and B alongwith documents Ex. WW1/1 to WW1/4.

XXXXXX None on behalf of Management present to cross-examined the witness. Hence cross-examination is marked nil.

Thereafter, Ld. A/R of Sh. Radha Charan, closed the evidence of workman on the instruction of Sh. Radha Charan. As case was proceeded Ex-parte against management. So, I fixed 30.10.2014 for Ex-parte arguments of Sh. Radha Charan.

On 12.3.15 I have heard the oral arguments of Sh. B.K. Prasad, Ld. A/R for the workman.

In the light of contentions of Ld. A/R for the workman I perused the pleadings of claim statement questions of determination mentioned in the schedule of reference and uncontroverted Ex-parte oral evidence of workman including contents of documents Ex. WW1/1 to WW1/4 which shows that burden to prove question of determination No. 1 lies on workman, I also perused the contents of citations submitted on behalf of the workman.

Out of aforesaid citations following principle laid down by their Lordship of Hon'ble Supreme Court in case of *Selva Raj Vs. Ltd. Governor of Island, Port Blair 1999 LAB. I.C. 598* applies with full force in the instant case:—

"Employee ordered to look upon duties of higher post employee worked on higher post though

temporarily and in an officiating capacity is not entitled to salary attached to higher salary, however, shall not amount to promotion".

On the basis of aforesaid discussion I am of considered view that workman could not proved that he is entitled to the Status of Chaudhary in the pay scale of Rs. 3050-4590 *w.e.f.* 01.04.1990. He could prove only that workman worked on higher post of Chaudhary though temporarily since 01.04.1990 till now. So, he is entitled to salary attached to Chaudhary post since 01.04.1990 till he continued as Chaudhary as he had actually worked.

On the basis of aforesaid discussion I am of considered view that reference is liable to be partly decided in favour workman and against management and claim statement is liable to be partly allowed. Which is accordingly decided. Award is accordingly passed and Management is directed to pay aforesaid difference of pay to workman Sh. Radha Charan within two months after expiry of available remedy against this Award.

Dated: 31.3.2015

HARBANSH KUMAR SAXENA, Presiding Officer

नई दिल्ली, 16 अप्रैल, 2015

**का.आ. 806.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सेंट्रल बोर्ड सेकेंडरी एजुकेशन (CBSE) के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, दिल्ली के पंचाट (संदर्भ संख्या 03/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16/04/2015 को प्राप्त हुआ था।

[सं० एल-42012/73/2013-आईआर (डीयू)]

पी० के० वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 16th April, 2015

**S.O. 806.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No. 03/2004) of the Central Government Industrial Tribunal-cum-Labour Court No.2, Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Central Board of Secondary Education (CBSE) and their workman, which was received by the Central Government on 16/4/2015.

[No. L-42012/73/2013-IR(DU)]

P. K. VENGUGOPAL, Desk Officer

**ANNEXURE****CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-  
CUM-LABOUR COURT-II, KARKARDOOMA COURT  
COMPLEX, DELHI****Present :** Shri Harbansh Kumar Saxena**ID No. 03.2004**

Sh. Parmender Kumar,  
S/o Vikram Singh,  
R/o A-1/74, East Gokal Pur  
Delhi-110094

*Versus*

Secretary,  
Central Board of Secondary Education (CBSE)  
Preet Vihar  
New Delhi-110092.

**NO DISPUTE AWARD**

The Central Government in the Ministry of Labour *vide* notification No. L-42012/73/2013-[IR(DU)] dated 21.01.2014 referred the following Industrial Dispute to this Tribunal for adjudication:—

"Whether the action of the Management of Central Board of Secondary Education in terminating the services of Sh. Parmender Kumar, S/o Vikram Singh, Ex-Junior Assistant *w.e.f.* March 2006 is justified or not? If not, what relief will be given to the workman and from which date?"

On 7.2.2014 reference was received in this Tribunal, Which was register as I.D. No. 03/14 and claimant was called upon to file claim statement with in fifteen days from date of service of notice. Which was required to be accompanied with relevant documents and list of witnesses.

Several opportunities given to workman as well as management but neither workman nor management filed claim statement/Response to the reference.

In this background there is no option to this tribunal except to pass No. Dispute Award because parties are not interested to file thier respective pleadings.

On the basis of which none of the parte can be directed to adduce its evidence.

No Dispute Award is accordingly passed.

Dated:25/3/2015

HARBANSH KUMAR SAXENA, Presiding Officer

नई दिल्ली, 16 अप्रैल, 2015

**का.आ. 807.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेडिकल सुपरिन्टेन्डेन्ट राम मनोहर लोहिया हॉस्पिटल के प्रबंधन के संबद्ध नियोजकों और

उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय न. 2, दिल्ली के पंचाट (संदर्भ संख्या 09/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16.04.2015 को प्राप्त हुआ था।

[सं० एल - 42012/81/2008-आईआर (डीयू)]

पी० के० वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 16th April, 2015

**S.O. 807.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 09/2009) of the Cent. Govt. Indus. Tribunal - cum - Labour Court No-2, Delhi as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Medical Superintendent Ram Manohar Lohiya Hospital and their workmen, which was received by the Central Government on 16/04/2015.

[No. L-42012/81/2008 - IR(DU)]

P.K. VENUGOPAL, Desk Officer

**ANNEXURE****CENTRAL, GOVERNMENT INDUSTRIAL TRIBUNAL-  
CUM-LABOUR COURT-II, KARKARDOOMA COURT  
COMPLEX, DELHI****Present :** Shri Harbansh Kumar Saxena**ID No. 9/2009**

Sh. Ashok Kumar,  
Ex-Nursing Attendant, R/o House No. 74,  
Ward No. 17, Mohalla Buchaheda,  
Kotputli, Jaipur

.....Workman

*Versus*

The Medical Superintendent,  
Ram Manohar Lohiya Hospital  
New Delhi-110001.

.....Management

**AWARD**

The Central Government in the Ministry of Labour *vide* notification No. L-42012/81/2008[IR(DU)] dated 16.02.2009 referred the following industrial dispute to this tribunal for adjudication:—

"Whether the action of the management of the Medical Superintendent, Dr. Ram Manohar Lohiya Hospital, New Delhi, in terminating the services of their workman Sh. Ashok Kumar, *w.e.f.* 26.01.2001, is legal and justified? If not, to what relief the workman is entitled to?"

On 27.02.09 reference was received in this tribunal. Which was register as I.D. No. 9/2009 and claimant was called upon to file claim statement with in fifteen days from date of service of notice. Which was required to be accompanied with relevant documents and list of witness.

Workman filed claim statement on 28.05.2009. Contents of Claim statement are as follows:—

1. That the workman above named was employed by the management of Dr. Ram Manohar Lohiya Hospital, New Delhi in December, 1985 as a Casual Worker and the workman was confirmed as a Nursing attendant in Sept. 1991.

2. That the workman has been serving with the management to the entire satisfaction of his superior official and having an unblemished service record but the alleged incident of the absence has taken place at workman become the victim of the circumstances and the same was neither arbitrary and nor deliberate on the part of the workman.

3. That the workman was on sanctioned leave *w.e.f.* 28th Sept., 1988 to 3rd Oct., 1998. After availing these sanctioned leave he came back to Delhi from his home town on 4th Oct., 1998. It was Sunday, on 4th Oct., and the workman was forced to resume his duty on 5th Oct., 1998.

4. That in the evening of the same date i.e. the 4th Oct., 1988 the workman received a telephone message from his Home Town i.e. the Kotputli Jaipur Rajasthan regarding his serious illness of his son namely Keshav after having come to know in the late hours on 4.10.1998 about the critical situation of his son the workman could not restrain himself and had to go to his son after informing Mr. M.C. Verma Office Suptt. HA-1 on telephone.

5. That the workman has been informing Sh. M.C. Verma through telephone about the condition of his son who was suffering from Jaundice and he was treated under the Doctors of N.D. Khan GAMS HP Neemkathana Sikkar Rajasthan. Copy of the medical card is annexed herewith as Annexure-A.

6. The subsequently the workman informed the Deptt. on 21.10.98 that he shall report for duty immediately after recovery from illness of his son.

7. That it would be pertinent to mention here that during the treatment of his son the workman was mentally depressed and also fell sick and could not report for duty on 21.10.1998, however, the workman continued to inform about his illness and illness of his son namely Keshav to his Deptt. telephonically. The workman was assured by his senior to take his treatment and his son and to report for duty thereafter. The workman remained under impression that the department has sanctioned his leave after knowing the fact of his illness and his son.

8. That knowing fully well that the workman was on leave with prior intimation the deptt. Published a notice in the newspaper Rajasthan addition on 18.12.2000 in which the workman was shown as absenting from duty unauthorisedly and directed him to report for duty immediately. The workman was given the last opportunity

to submit his reply for which he tried his level best to report for duty on 22.12.2000 but neither the workman was allowed to resume his duties nor the workman was given the copies of the alleged department enquiry proceedings and as such the workman was compelled to return back to his home town as there was no other option.

9. That aggrieved from the action of the management for not allowing him to resume his duties, the workman submitted a registered letter on 22.12.2009 followed by the registered letter dated 23.2.2001 and 17.5.2001, copy of the postal receipt is annexed as Annexure B and C and thereafter the workman had been wondering to resume his duty but all the efforts of the workman remained futile. Further, the workman was shocked to see another Press note published in the news paper Dainik Bhaskar in Rajasthan Addition on 25.6.2002, Copy of the same is annexed as Annexure D. That the workman has been terminated from the service *w.e.f.* 26.2.2001.

10. That after the termination of the workman from service workman submitted an appeal in the month of July, 2002 before the Higher Authority of the Management (copy of the same is enclosed as Annexure E) disclosing the reason for his remaining on leave and requesting to reinstate his in service.

11. That so called enquiry officer after conducting an *x-parte* enquiry submitted an arbitrary report against the workman. The enquiry conducted by the Inquiry Officer is illegal and unjustified and against the principles of natural justice. The enquiry conducted by the Inquiry officer and his findings are perverse and vitiated. The workman tried to join the departmental enquiry proceedings but the workman has never been allowed to participate by the concerned official of the management and not copy of the departmental inquiry was served upon the workman.

12. That after replying on the said arbitrary *ex-parte* enquiry report the department removed the workman from the service without complying the provisions of law and adopting the principles of natural justice.

13. That aggrieved from the removal order from his service the workman consulted that matter with his advocate who advised the workman to file the appeal before the Hon'ble CAT Principal Bench at New Delhi, which was dismissed as withdrawn on the advice of the Hon'ble Tribunal with liberty to approach the departmental authority I. Copy of the order of the Hon'ble CAT is annexed here with as Annexure F.

14. That it would be pertinent to mention here that the workman has filed an appeal/representation against him before the Hospital Authority in the month of July, 2002. In response to the said appeal, representation the workman was advised to file an appeal before the Appellate Authority of the Health Service Directorate *vide* letter dated 17.5.2004. Copy of the said letter is annexed as Annexure G. In



compliance of the said letter, the workman filed an appeal before the Director General, Ministry of Health and Family Welfare, Deptt. of Health, Nirman Bhawan, New Delhi-1 which was duly received by the said authority on 22.08.2006 but surprisingly once again his appeal has not been disposed off and the workman had been advised *vide* letter dated 12.06.07 file the said appeal before the appellate authority in the hospital, copy of the said letter is annexed an Annexure H.

15. That as per the advice of the Directorate General of Health Service, the workman filed an appeal/representation to the appellate authority of the management but till date no action has been taken hence the present claim before your honour.

16. That the workman/claimant filed claim before the Asstt. Labour Commissioner/Conciliation Officer Central Govt. New Delhi dated 18.3.2008 but the management did not come for settlement and file the bogus and vague reply and thus conciliation officer referred the matter before the Hon'ble Tribunal.

17. That the delay in raising the dispute before your honour is due to wrong advise by the law consultant and keeping the matter pending by both the aforesaid management. It is well settled law that no person should be made to suffer on account of mistake of his counsel. The Case of the workman is very genuine and he is unemployed from the date of his illegal dismissal from the service as such he is entitled to be reinstatement in service with full back wages and benefits and continuity of service along with all consequential benefits.

It is, therefore, most respectfully prayed that this Hon'ble Tribunal may kindly be pleased to pass an award against the management with reinstatement the workman in service with full back wages and continuity of service along with all consequential benefits.

Pass such other order(s) which this Hon'ble Tribunal deems fit and proper be also granted in favour of the workman.

Against claim statement management filed written statement on 28.5.2010. Contents of written statement is as follows:—

#### BRIEF HISTORY OF THE CASE

The case is brief that the workman was working as Nursing Attendant on *ad-hoc* basis *w.e.f.* 6.10.1989 and thereafter regularized on the said post *w.e.f.* 6.10.1989 and thereafter regularized on the said post *w.e.f.* 6-9-1991. In the year 1997 the workman was absent from his duty from 17.8.1997 to 14.10.1997=59 days and from 16.10.1997 to 17.2.1998=125 days thereafter the workman had done his duty for a period 3 months he was again absent from 25.5.1998 to 12.08.1998=80 days. The workman joined his duty on 13.08.1998 and was granted 1 and ½ day C.L.

*w.e.f.* 30.09.1998 and 3.10.1998 as 4.10.1998 was Sunday. The workman did not join his duty on 5.10.1998 and remained absent from duty without prior permission and intimation. On 6.11.1998, Regd. letter as received by Sh. Mool Chand Verma from Sh. Ashok Kumar that the workman was ill and will join his duty on 20.11.1998 and 7.1.1999 to join duty immediately, but the workman neither joined his duty nor did he sent any communication about his absence. After that a disciplinary proceeding under Rule 14 of CCS Rule, 1965 was initiated against the workman. Despite several communications sent to the workman on his last known residential address, the workman failed to join his duty. The workman did not give any reply to the charge sheet issued to him and did not appear before the inquiry officer. The inquiry officer had to conduct the inquiry *ex-parte* and charges of unauthorized absence stands proved in the report of the workman. A copy of inquiry report was sent to the workman on his last known address by Regd. Post for making representation, if any but the same was received back undelivered from the Postal Authorities. Thereafter, a Press Notice was issued on 18.12.2000 in various newspaper for giving last opportunity to the workman for making his representation. In the reply to this notice the workman made a representation that he has not received any communication from the office and expressed his willingness to join his duty. When the workman personally came to join his duty on 5.1.2001, he was allowed to join his duty and at the same time a copy of inquiry report was personally handed over to him to make representation, if any in this regard. Instead of submitting his representation within stipulated time, the workman proceeded on leave from 7.1.2001 to 20.1.2001 and thereafter again absent from 21.1.2001 to 25.2.2001. Thereafter, a penalty of Removal from service was imposed on him *w.e.f.* 26.2.2001. A copy of that order was sent to his last known address by Regd. Post and the same returned back undelivered. Thereafter, again a Press Notice was issued on 25.6.2002 regarding this order.

#### PARAWISE REPLY

1-2. That the contents of Para No. 1 and 2 are matter of record and need no reply.

3. That the contents of Para No. 3 are wrong and denied. It is submitted that the workman was on 1½ Days C.L. from 30.09.1998 and 3.10.1998 as 4.10.1998 was Sunday. The workman has to join his duty on 5.10.1998.

4-5. That the contents of Para No. 4 and 5 are wrong and denied. It is submitted that Sh. M.C Verma, had not received any telephonic message from the workman.

6-7. That the contents of Para No. 6 and 7 are wrong and denied. It is submitted that the authorities sent a telegram at the residential address of the workman on 9.11.1998 to join duty immediately or to produce the medical certificates in case he is sick. On 16.11.1998, Regd. letter was received by Sh. M.C Verma from the workman that the workman was

ill and will join his duty on 20.11.1998 and the workman will submit the details of leave on joining his duty. The workman failed to join his duty on 20.11.1998 and no communication or application for leave was received from him. The authorities sent another telegram on 7.1.1999 to the workman to join his duty immediately, but no reply was received from the said of the workman.

8-9. That the contents of Para No. 8 and 9 are wrong and denied. It is submitted that two telegrams were sent to the workman on 9.11.1998 and 7.1.1999 to join duty immediately, but the workman neither joined his duty nor did he send any communication about his absence. After that a disciplinary proceeding under Rule 14 of CCS Rule, 1965 was initiated against the workman. Despite several communications sent to the workman on his last known residential address, the workman failed to join his duty. The workman did not give any reply to the charge sheet issued to him and did not appear before the inquiry officer. The inquiry officer had to conduct the inquiry ex-parte and charges of unauthorized absence stands proved in the report was sent to the workman on his last known address by Regd. Post for making representation, if any but the same was received back undelivered from the Postal Authorities. Thereafter a Press Notice was issued on 18.12.2000 in various newspapers for giving last opportunity to the workman for making his representation. In the reply to this notice the workman made a representation that he had not received any communication from the office and expressed his willingness to join his duty. When the workman personally came to join his duty on 5.1.2001, he was allowed to join his duty and at the same time a copy of inquiry report was personally handed over to him to make representation, if any in this regard. Instead of submitting his representation, within stipulated time, the workman proceeded on leave from 7.1.2001 to 20.1.2001 and therefore again absent from 21.1.2001 to 25.2.2001. Thereafter, a penalty of Removal from service was imposed on him *w.e.f.* 26.2.2001. A copy of that order sent to his last known address by Regd. Post and the same returned back undelivered. Thereafter, again a Press Notice was issued on 25.6.2002 regarding this order.

10-13. That the contents of Para No. 10 to 13 need no reply.

14-15. That the contents of Para No. 14 and 15 need no reply being matter of record.

16. That the contents of Para No. 16 are wrong and denied. It is submitted that the Management attend all the hearing dates before the Astt. Labour Commissioner/ Conciliation Officer Central Government, New Delhi and filed the reply on the facts as per the service record of the workman. The management gave full opportunity to workman and also allowed to him to join the duty on 5.1.2001 and handed over a copy of inquiry report to make a representation. Instead of submitting his representation,

the workman again proceeded on leave from 7.1.2001 to 20.1.2001 and thereafter again absent from his duty unauthorizedly *w.e.f.* 21.1.2001.

17. That the contents of Para No. 17 are wrong and denied. It is submitted that the authorities gave full opportunity to workman for making his representation and also allowed to him to join the duty on 5.1.2001 and at the same time a copy of inquiry report was personally handed over to him to make a representation, if any in this regard. Instead of submitting his representation within stipulated time, the workman again proceeded on leave from 7.1.2001 to 20.1.2001 and thereafter again absent from 21.1.2001 to 25.2.2001. That shows that the workman was not dedicated and devoted to his duty. As the workman was absent from his duty for more than two years unauthorisedly, the penalty of Removal from Service imposed on him.

#### PRAYER

It is, therefore, most respectfully prayed that this Hon'ble Court may be pleased to dismiss the present application with costs in favour of Management and against the workman, in the interest of justice.

Against written statement workman filed rejoinder on 5.8.2010. Contents of Rejoinder is as follows:—

It is denied that the workman was working as a Nursing Attendant on ad-hoc basis *w.e.f.* 6.10.89 and regularized *w.e.f.* 6.10.89. It is submitted that the workman was employed by the management of Dr. Ram Manohar Lohiya Hospital. New Delhi in Dec. 1985 as a casual worker and he was confirmed as a Nursing attendant in Sept. 1991. The workman has been serving with the management in Sept., 1991 to 3.10.1998 to the entire satisfaction of the superior official and having unblemished service record but the alleged incident of the absence has been taken place as a workman become the victim of the circumstances and the same was neither arbitrary, nor deliberately on the part of the workman. It is denied that the workman was absent from his duty from 17.8.97 to 14.10.97=59 days, and from 16.10.97 to 17.2.98=125 days as alleged. It is submitted that the applicant the workman has gone out of station duly intimated in writing to the management and with the permission of management. It is correct that the workman did not join his duty on 5.10.1998. It is denied that two telegram were sent to the workman on 9.11.98 and 7.1.99 to join duty as alleged. It is submitted the workman has never received any telephone from the management. It is submitted that the management illegally initiated the disciplinary proceeding against the workman under Rule 14 of CCS Rule 1965. It is further submitted that no communication was made to the workman in any manner. It is submitted that no question of replying the charge arises because the workman has never received any charge sheet. It is submitted that the management has illegally initiated the enquiry proceedings against the work. It is submitted

that the workman has never received any inquiry report from the management. It is further submitted that the workman is residing at the same address so mentioned in the record of the management. It is submitted that all the enquiry proceedings are on-side proceedings because the enquiry is colluded with the management. It is submitted that on 5.1.2001 the workman never received any enquiry report. It is further submitted that the management forcefully obtained the signature of the workman on the blank papers, vouchers etc. Rest of the averments made therein are made up and concocted. It is submitted that the penalty from removal from service was imposed on him *w.e.f.* 26.2.2001 is illegal arbitrary and unjust. It is submitted the workman has never received any order from the Enquiry Officer or from the management. Rest of the para is wrong and denied the claim be read as reply to the brief facts which are not reproduced herein for the sake of brevity.

#### REJOINDER ON MERITS:

1-2. That the contents of para 1 and 2 of the reply need no reply being admitted by the management. The corresponding para of the claim is reaffirmed as correct.

3. That the contents of para 3 of the reply need no reply being admitted by the management. The corresponding para of the claim is reaffirmed as correct.

4-5. That the contents of para 4 and 5 of the reply need no reply being admitted by the management. The corresponding para of the claim is reaffirmed as correct. It is denied that Sh. M.C. Verma had not received any telephonic message from the workman.

6-7. That the contents of para 6 and 7 reply need no reply being admitted by the management. The corresponding para of the claim is reaffirmed as correct. It is denied that Sh. M.C. Verma had not received any telephonic message from the workman. It is denied that the authorities sent a telegram at the residential address of the workman on 9.11.98 to join duty immediately or to produce the medical certificate as alleged. It is denied that no communication or application for leave was received from him. It is denied that the authorities sent another telegram on 7.1.99 to the workman as alleged.

8-9. That the contents of para 8 and 9 of the reply need no reply being admitted by the management. The corresponding para of the claim is reaffirmed as correct.

It is submitted that all the averments made therein are mere repetition which are totally wrong and denied and the foregoing reply may be read as part of the para under reply.

10-13 Paras 10 to 13 of the reply need no reply being admitted by the management. The corresponding para of the claim is reaffirmed.

14-15. Paras 14 and 15 of the reply need no reply being admitted by the management. The corresponding para of the claim is reaffirmed as correct.

16. The Para No. 16 of the reply need no reply being admitted by the management. The corresponding para of the claim is reaffirmed as correct.

17. That Para No. 17 of the reply need no reply being admitted by the management. The corresponding para of the claim is reaffirmed as correct. The foregoing reply may be read as reply to this para. It is denied that the workman was absent from his duty from more than two years unauthorisedly alleged. It is submitted that the management already admitted that the workman joined his duty on 5.1.2001.

Prayer para of the reply is wrong and denied. The management is not entitled to any relief as prayed in the reply.

It is, therefore, prayed that the claim/award be passed in favour of the workman and the relief be granted as prayed in the statement of claim.

On the basis of pleadings of parties my Ld. Predecessor framed following issues on 22.3.2012:—

- (i) Whether the Departmental Enquiry conducted in this case was legal, just and fair and was not in violation of the principle of natural justice, if not, what directions are called for in this case?
- (ii) As per the reference sent by the Govt. of India to this Tribunal in this case.
- (iii) Relief.

On 22-3-2012 my Ld. Predecessor also passed following order on order sheet:—

"Keeping in view the authority reported as 81(1999) Delhi Law times 696, UCO Bank Vs. The Presiding Officer and another, Issue No. 1 is ordered to be treated as preliminary issue. However, workman will lead evidence first on this issue. For evidence of the workman by way of affidavit to come up on 01.06.2012. The workman to file his affidavit restricting the enquiry aspect only."

Workman in support of aforesaid order adduce his evidence by way of affidavit. He tendered his affidavit on 26.4.2013. He was partly cross-examined on that day and 24.10.2013 was fixed for remaining cross-examination which has been concluded and after his evidence workman closed the evidence and case was fixed for management evidence but management adduce no evidence so his right of adducing evidence has been closed by me 13.10.14 and I fixed 16.12.14 for arguments on disposal of Preliminary Issue No. 1.

Workman and management field their written arguments and I also heard the oral arguments of Ld. A/R's for the parties.

On 13.3.2015 I passed detailed and reasoned order on order sheet relating to disposal of Preliminary Issue No. 1.



Which is decided against workman and in favour of management. Through, which I came to conclusion that inquiry conducted against workman by management is Just, proper and legal.

On same day I put up the file arguments on proportionality of punishment. As Ld. A/R's for the parties has already argued on the point of proportionality of punishment.

However, I afforded the opportunity to Ld. A/R's for parties to file synopsis along with ruling before passing of award.

Ld. A/R for the workman filed synopsis. Which contains following contents:—

1. That the workman was employed by the management *i.e.* Dr. Ram Manohar Lohia Hospital in December, 1985 as a casual worker and the workman was letter on confirm by the management as a nursing attendant.

2. That the workman was work with the management. September 1991 upto 03.10.1998 to the entire satisfaction of the superior officer and having an unblemished service record, but the alleged incident of the absence was taken place as the workman become the victim of the circumstances and the same was neither arbitrary nor deliberate on the part of the workman. The workman was on section live with effect from 03.10.1998 and when to native place to see his ill son namely Keshav who was suffering from Jaundice. After availing the sanctioned leaves, the workman came to Delhi from his home town on 04.10.1998 in the evening of the same day workman received from his home town *i.e.* Kotputli Rajasthan regarding the serious illness of the son namely Keshav after having come to know in the hours on 04.10.1998 about the critical situation of his son the workman could not restrain himself and had to go to his son after informing Mr. M.C. Verma then Office Superintendent HA-1 on telephone.

3. That during the treatment of his son, the workman was mentally depressed and also felt sick and could not report on duty on 21.10.1998. However, the workman Continued to inform about his illness and illness of his son Keshav to management telephonically as well as in writing through registered post. The original postal receipts are WW-1/3(colly). The workman was assured by his seniors at the time of telephone call and it was assured by the seniors to take care of himself and the sick son Keshav report on duty only thereafter. The copy of the medical records of the workman and his son are already is Ex. WW-1/1 (colly) (Twenty pages). The knowingly well about the sickness of the workman and his son, he management deliberately published the in the newspaper dated 18.12.2000 in which the workman was shown as absently from duty unauthorizedly and directed for duty immediately

on 22.12.2000. The workman came to Delhi to join duty on 22.12.2000, but neither the management allowed the workman to join his duty nor the workman was given alleged departmental enquiry and copy of charge against him and workman was compelled to return back to his home town.

4. That on 13.03.2015 this Hon'ble court decided the preliminary issues frame on 22.3.2012 :

- (i) Whether the Departmental Enquiry conducted in his case was legal, just and fair and was not in violation of the principle of natural justice, if not, what directions are called for in this case?
- (ii) As per the reference sent by the Govt. of India to this Tribunal in this case.
- (iii) Relief.

5. That this Hon'ble Court have ample power under section 11-A of Industrial Dispute Act 1947:—

"11 A ..... Powers of Labour courts, Tribunals and National Tribunals to give appropriate relief in the case of discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National for adjudication and, in the course of the adjudication proceedings the Labour Court, Tribunal or dismissal was not justified, it may by its award, set aside the order of discharge or dismissal and directed re-instatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require":

The workman relied upon the following judgment decided by the High Courts of Supreme Court of India.

1. In case titled as Amanullah *Versus* Chennai Port Trust, Central Govt. Industrial Tribunal Cum-Labour Court decide on 05.12.2014 held in para No. 35 of the judgment:—

"{35} while coming to the quantum of benefit though the labour court has passed an award by directing the management to pay the terminal benefits from the date of discharge treating the same as compulsory retirement taking into consideration the facts that the Appellant has approached the labour court belatedly, and considering the facts that the Appellant has also filed an affidavit dated 14.08.2014 before this court agreeing to receive the terminal benefits including pension for the period beginning from there year prior to the dismissal of W.P. No. 14736 of 2005 on 29.04.2005, we find that the Appellant is entitled terminal benefit including pension only with effect from 29.4.2002".

2. The Hon'ble High Court of Delhi held in case of Sunil Kumar *Versus* Union of India and others decided by the Justice Pradeep Nandrajog & Suresh Kait on 07.3.2011



published in the Delhi Law times 628 (D.B.) 178 (2011) in this Judgment para No. 14 to 16, 19 and 20 and held that:-

"Unauthorized absence- Imposition of penalty-removal from service not justified-Petitioner is not a coward-as a constable he has served in various parts of India-he had to rush to his village on account of his ailing wife and newly born female child no doubt, Petitioner is in default, but authorities have unnecessary read into conduct of Petitioner and act of cowardice-Qashing the revisional order dated 08.10.2009-Matter remitted to revisional authority to pass fresh order levying an appropriate penalty upon Petitioner which would not be of a kind where Petitioner loses his job. Petitioner loses his job Petitioner would be reinstated in service and appropriate penalty would be levied-till the time he is reinstated, no wages would be paid to Petitioner"

3. The Hon'ble High Court of Delhi in the matter of cited in the Delhi law time 696, 196(2013) case titled as NTPC Ltd. *Versus* Jagdish Chander decide on 21.12.2012 held that:-

In view of length of service of the Respondent, Respondent cannot be denied opportunity to present his defence, no reason to interfere with impugned award directing reinstatement of Respondent without back wages (para No. 8 to 22)".

4. That the Hon'ble Supreme Court of India in 2008-I-LLJ-849 (SC) Dr. Justice Arijit Pasayat Mr. Justice P. Sathasivam in the matter L & T Komatsu Ltd. N. Udayakumar held that:

"Dismissal of workman on habitual absenteeism, holding gross violation of discipline by departmental enquiry-Labour court or High Court cannot interfere unless the punishment imposed is wholly and shockingly disproportionate to the degree of guilt of the workman".

In view of the above submission and judgment relied by the workman submitted that the power under section 11-a is akin to appellate power. This Hon'ble Court have jurisdiction to interfere with quantum of punishment even in cases where the fining of the quilt recorded by the employer is upheld or in the case of no enquiry or defective enquiry; *vidya Dhar Vs. Hindustan Coper Ltd.* 1994 LLR 299 (Ra). This Hon'ble Court have discretion to award Lesser punishment.

It is therefore, most respectfully prayed that workman the age about the 48 years.

Pass such other order (s) which this Hon'ble Tribunal deem fit and proper be also granted in favour of the workman.

Now, it is to be decided whether punishment given to workman is in proportion to misconduct of the workman of

his continuous absence. As Ld. A/R for the workman has placed reliance on principles laid down in rulings cited by him. So, it to be determined whether those rulings applies in the instant case.

Principle laid by Hon'ble Supreme Court in case of L & T Komatsu Ltd. *Vs.* N. Udayakumar 2008-I-LLJ-849 (SC) is inapplicable in the instant case because in the instant case workman was only removed not dismissed.

Moreover, period of absence of workman was greater than period mentioned of absence of the workman in the reported case.

Principle laid down by Hon'ble Supreme Court in case of Regional Manager Central Bank of India *Vs.* Vijay Krishna Neema & Ors. IV(2009)SLT 430 is in applicable in the instant case due to continuous of long absence of workman without any plausible reason and on the basis inquiry report Disciplinary Authority passed punishment. Which was confirmed by Appellate Authority. Dormancy on the part of workman to file belated time barred appeal has not even admitted by Appellate Authority. Workman filed no remedy against conformed order of Disciplinary Authority. So, workman is entitled to no benefit on the basis of principle laid down in the aforesaid ruling.

Principle laid down by Hon'ble Supreme Court in case of Harjinder Singh *Vs.* Punjab State Warehousing Corp. I (2010)SLT 448 is inapplicable in the instant case due to distinguishable facts. Hence, workman is entitled to no benefits on this count.

Principle laid down Hon'ble High Court in case of NTPC Ltd. *Vs.* Jagdish Chander 196(2013) Delhi Law times 696 also inapplicable in the instant case because of absence of workman from his duty since 17.8.1997 to 14.10.1997 = 59 days, 16.10.1997 to 17.2.1998=125 days, 25.05.1998 to 12.08.1998 = 80 days. The workman joined his duty on 13.8.1998 and was granted 1 ½ day C.L. *w.e.f.* 30.09.1998 and 3.10.1998 as 4.10.1998 was Sunday. The workman did not join his duty on 5.10.1998 and remained absent from duty without prior permission and intimation. On 16.11.1998, Regd. Letter was received by Sh. Mool Chand Verma from the workman that the workman was ill and will join his duty on 20.11.1998. Two telegrams were sent to the workman on 9.11.1998 and 7.1.1999 to join duty immediately, but the workman neither joined his duty nor did he send any communication about his absence.

In these circumstances no benefits can be given to workman on the ground of aforesaid principle laid down by lordship of Hon'ble Delhi High Court.

On the basis of aforesaid discussion I am of considered view that departmental inquiry conducted against workman by management was legal, just, fair and was not in violation of natural justice and punishment imposed by Disciplinary Authority on the basis of inquiry report which has been confirmed by Appellate Authority is also in proportion to

misconduct of workman. In this background reference is liable to be decided against workman and in favour of management. Which is accordingly decided and claim statement is dismissed.

Award is accordingly passed.

Dated : 31.3.2015

HARBANSH KUMAR SAXENA, Presiding Officer

नई दिल्ली, 16 अप्रैल, 2015

**का.आ. 808.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इंडियन ऑयल कारपोरेशन लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, गुवाहाटी के पंचाट (संदर्भ संख्या 02/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 6/4/2015 को प्राप्त हुआ था।

[सं. एल-30011/42/2013-आईआर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 16th April, 2015

**S.O. 808.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. I.D. No. 02/2014) of the Central Government Industrial Tribunal/Labour Court, Guwahati now as shown in the Annexure in the Industrial Dispute between the employees in relation to the management of Indian Oil Corporation Limited and their workman, which was received by the Central Government on 6/4/2015.

[No. L-30011/42/2013-IR(M)]

JOHAN TOPNO, Under Secy.

#### ANNEXURE

#### IN THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL- CUM-LABOUR COURT, GUWAHATI, ASSAM

**Present :** Shri L.C. Dey, M.A., LL.B.  
Presiding Officer,  
CGIT-cum-Labour Court, Guwahati.

#### Ref. Case No. 02 of 2014

In the matter of an Industrial Dispute between:-

Shri Tarun Hazarika.....Claimant/workman.

-Vrs-

The Management of Indian Oil Corporation Ltd. (Assam Oil Division), Digboi.....O.P./Management.

#### APPEARANCES:

**For the Workman. :** The Jt. Secretary, AOC Labour Union, Digboi.

**For the Management :** Mr. R.C. Barthakur,  
Management representative.

Date of Award : 24.11.2014

#### AWARD

1. This Reference has been initiated on an Industrial Dispute exists between the Management of Indian Oil Corporation Limited, Assam Oil Division, Digboi and their workman, which was referred to by the Ministry of Labour, Government of India under Clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the ID Act *vide* their order No.L-30011/42/2013-IR(M), dated 21.02.2014 in respect of the matter specified in the Schedule below:

#### SCHEDULE

"Whether the action of the management of Indian Oil Corporation Limited, Assam Oil Division, Digboi in transferring Shri Tarun Hazarika, Employee No. 136209 is legal and justified? If not, what relief he is entitled to?"

2. After registration of this Reference notices were issued upon both the Union and the Management. Accordingly, both the parties appeared and submitted their Claim Statement/Written Statement.

3. The case of the workman, in nutshell, is that the workman Shri Tarun Hazarika, Employee No. 136209 has been working in Indian Oil Corporation Ltd. (AOD) since 21.07.1987 and discharging his duty with the satisfaction of the superiors in different assignments and now working as Senior Office Superintendent, Grade VIII under Admin. & Welfare Department. The workman has also been functioning as President of AOC Labour Union registered bearing No. 43 affiliated to INTUC under No. 8155. The AOD Labour Union has submitted the list of office-bearers of their Union within the stipulated period from time to time to the AOD Management to recognize as "Protected Workmen" subject to Section 61(1) of Industrial Dispute Act, 47. In the month of July, 2013 the workman was served with an office order No. PERS/CONF 3G/2013-562 dated 07.06.2013 transferring him from Admn. & Welfare Department to Tech. services (HS & E) department inside Refinery on 6.7.2013 with a view to restrain him from Union activities. The workman alleged that in pursuance of such malafide transfer, a General Council of AOC Labour Union was held in the month of July, 2013 and it was decided to protest against such malafide transfer order of President Shri Tarun Hazarika, the workman; the Vice President, Shri Aftab Hussain and other members; at this crucial juncture of forthcoming union membership verification, the transfer of office bearers and active members will damage the union's stability and strength which is not at all just and fair on the part of AOD management. Thereafter several representations were submitted to the AOD management for recalling the transfer order but the management did not pay heed to their repeated requests and was adamant to

consider the same being their malafide intention to damage the union activity. Finding no way the Industrial dispute was raised before the ALC(C), Dibrugarh and conciliation was held to settle the matter amicably but the AOD management did not arrive at a mutual settlement even after assurance to review the transfer matter before conciliation officer. It is mentioned that the said matter of alleged transfer of AOD Labour Union's office bearers was also placed before the CLC(C), New Delhi for his direction to stop such malafide transfer and keeping in view the justification over the matter The CLC (C), New Delhi forwarded the matter to RLC (C), Guwahati who requested the Executive Director of AOD, Digboi *vide* letter No. G/R.8(38)/2013 dated 26.11.2013 to keep in abeyance of all the transfer of office bearer and active members until the election process are over. Thereafter the AOD management has taken a view to stay the transfer order of the workman and passed an order to continue his earlier assignment *vide* letter No. PERS/Conf-3G/2013-1000 dated 06.09.2013. The workman added that he had been discharging his duty in his existing assignment and giving his full attendance since the date of transfer order but the salary of 54 days are still remain unpaid even though the matter was under conciliation at ALC (C), Dibrugarh and under consideration of the management, which is purely unfair labour practice. Hence, the workman prayed to look into the matter so that the natural justice to the workman is not denied.

4. The management, on the other hand, submitted their written statement *inter-alia*, that the order of reference made by the Central Government is not maintainable as the transfer is a condition of service and the issuance of transfer order to an employee cannot be an Industrial dispute and hence, the order to reference is bad and the same cannot be adjudicated. The Management mentioned that the IOCL (AOD) is a Division of Indian Oil Company Ltd. having its Refinery at Digboi and the same Division was known as Assam Oil Company Ltd. earlier which was merged with the IOC Ltd. and is kept a separate Division of IOCL. The workman was issued an Office Order dated 7.6.13 transferring him to HS & E (Health Safety & Environment) and he was advised to be released from his present assignment with on 6.7.13 *vide* order dated 7.6.13; and workman was released from the present assignment with effect from 13.7.13 *vide* order dated 12.7.13. Thereafter the workman submitted representations on 21.8.13 for allowing him to join in his earlier assignment. Accordingly the workman was allowed to continue till 31.3.14 in his present assignment. The workman joined his earlier assignment on 6.9.13 and thereafter *vide* order dated 07.05.2014 the workman was allowed to continue his earlier assignment and ordered that he will be released from earlier assignment on 30.9.2014. In the mean time four numbers of employees who were transferred during the same time including the workman submitted four Writ Petitions on the ground that conciliation proceeding in respect of some other issues were pending at the time of issuance of this transfer order

and the Writ petition filed by the workman was numbers as W.P.(C) No. 4292/13. The Hon'ble Gauhati High Court by a common order dated 01.08.2013 disposed of all the Writ Petitions without entering into the merit holding that since the Conciliation Proceeding is pending and if the writ petitioner is aggrieved by the transfer order, they may file Application u/s 33A of the I.D. Act within a period of 7 days before the conciliation officer and directed the management that if the transfer order are not already given effect to, shall be kept in abeyance for a period of 15 days from 01.08.13.

The management further stated that pursuant to the Hon'ble High Court's order it is not known whether the workman has filed any such complaint petition u/s 33A of the I.D. Act. However, the transfer is a condition of the service of the workman who was transferred just within the Refinery Complex, and as such, he cannot claim that the transfer is malafide or illegal and hence the workman is not entitled to any relief of the instant reference. Since the transfer is a condition of service of the employees of the IOCL no one can claim that he should not be transferred from a post in which he is working since long and if such transfer is interfered by this Hon'ble Tribunal the other workmen of the Corporation will naturally claim that they should also not be transferred and in such case, it will bring a stand still in the organization. The management also mentioned that the AOC Labour Unions is not a recognized union during the relevant period and the Mineral Workers' Union was the recognized majority union during the relevant period and as such, the claiming of protected workman status by the workman does not arise. From the verification of membership conducted by the Ministry of Labour and Employment department it was ascertained that AOC Labour Union has only 772 members and as such their claim for not giving protected workman status to 11 workmen cannot be considered. It is contended by the management that the workman was transferred from Administration department to HS & E Department, Digboi and hence, it is not correct that the workman could not meet the other workman for any union business. The management denying the contention made in para-4 and 5 of the W.S. submitted by the workman mentioned that the transfer order was issued to about 60 employees during the year for organizational requirement only and out of them majority are the members of the recognized union, and that the management by giving due weightage of the representation of the workman he was allowed to his earlier assignment with effect from 6.9.13 to 31.3.14 and thereafter he was allowed to continue is earlier assignment till 30.9.14 allowing the workman to continue his current assignment till 30.9.14 and till such time membership verification of union would be completed. The management further mentioned that the workman was released from his earlier assignment *w.e.f.* 13.7.13 (afternoon) with an advise to join his new assignment in HS & E Department but even after release from his earlier assignment he did not report in his new assignment. Meanwhile in reference to his



representation dated 21.8.13 he was allowed to his earlier assignment by letter dated 6.9.13, and in between, the workman was absent from duty without any leave or permission and as such, the principle of no work no pay would apply for those days. Hence, the workman is not entitled for wages for those days when he was absent without leave or permission. Thus the management prayed for answering the reference in their favour.

5. On receipt of the notice issued from this Tribunal the workman appeared and submitted his Claim Statement along with petition praying for restraining the management from engaging lawyer. After hearing both the sides the petition was allowed restraining the management from engaging lawyer in this reference *vide* order dated 27.6.14. Accordingly this Reference was fixed for evidence of the workman on 25.8.14 but the workman remained absent without any step on 25.8.14 and on subsequent fixed dates *i.e.* on 22.9.14, 17.10.14 and 17.11.14 and thereafter the case was heard *ex-parte* against the workman.

The Management examined Mr. Ripun Chandra Barthakur, Administrative Officer, IOCL(AOD), Ulubari, Guwahati as Management Witness No. 1 *ex-parte*. I have heard argument from Management side.

6. The Management witness No. 1 Mr. R.C. Barthakur stated the workman Tarun Hazarika is a workman of their Company and the condition of service of the workman is governed by the Standing Order of Assam Oil Company Ltd. marked as Exhibit-A; the workman was transferred on 7.6.13 according to the provision of the Standing Order and as per the interest of the Company's service from Digboi Administration Department to HS & E Department, Digboi along with some other workmen *vide* Exhibit-B. Against the said order of transfer the workman moved before the Hon'ble High Court which was pleased to direct the workman to raise Industrial Dispute. Thereafter the AOC Labour Union raised a dispute alleging the mala fide transfer of the workman including the present workman but the Government of India *vide* their letter No.L-30011/56/2013-IR(M) dated 2.7.14 refused to refer the dispute observing that the matter raised cannot be considered as an Industrial Dispute, *vide* Exhibit-C. As such, the present reference is not maintainable in law. The MW.1 further mentioned that the workman *vide* his application dated 21.8.13 (Exhibit-D) requested the management to cancel the transfer order. Considering his request the management allowed the workman to continue his earlier assignment upto 31.3.14 *vide* letter No.PERS/CONF/ 3G/2013-1000 dated 6.9.13 (Exhibit-E) and the workman was also released from Administrative department *vide* order dated 7.5.14 (Exhibit-F) to join his new assignment on 30.9.14. But the workman has not joined his new assignment rather he is attending his earlier duty/assignment under Administration Department. The MW.1 further stated that the transfer of the workman was done as per the provision of law and the Standing

Order of the Management, and the workman since after receiving the notice was represented by their Joint Secretary, AOC Labour Union, Digboi and thereafter he remained absent and as such, the conduct of the workman reveals that he has not accepted the transfer. Therefore the action of the management is legal and justified and hence, the workman is not entitled to any relief as claimed.

On perusal of the claim statement submitted by the workman. W.S. submitted by the management along with evidence of the management witness No.1 and the documents produced by both the parties it appears that the workman Tarun Hazarika is a workman of IOCL AOD, Digboi and his service is governed by the Standing Order of Assam Oil Company Ltd. The workman was transferred as per the provision of Standing Order in the interest of Company's service on 7.6.13 from Administration Department of IOCL, AOD, Disboi to HS & E Department, IOCL AOD, Digboi at the same station along with some other workmen while the workman moved the Hon'ble Gauhati High Court against the said order of transfer and the Hon'ble High Court was pleased to direct the workman to raise industrial dispute. While the AOC Labour Union raised a dispute alleging the transfer of the workman but the Government of India *vide* their letter dated 2.7.14 (Exhibit-C) refused to refer the dispute observing that the matter raised can not be considered as an Industrial Dispute.

7. The Chapter XV.A of the Standing Order of the Assam Oil Company Ltd., under the Industrial Employment (Standing Order) Act, 1946, which runs as under:

"A Transfers:

Employees may be transferred due to exigencies of work, from one area to another wherever the Company may be carrying out its operation and from one department or section to another provided that the pay, grade continuity or conditions of service of the employees are not adversely affected by such transfer and provided also that where an employee is transferred from one job to another that job should be of similar nature such as he is capable of doing. Management will give reasonable notice to the workers concerned in case of such transfers."

It is established principle that the transfer is a condition of service and in the instant case the workman was transferred from Administration Department to HS & E Department of IOCL (AOD) and it was done by the management due to the exigencies of work as well as in the interest of the Company. The workman although took the plea that he falls within the category of "Protected Workman" u/s 61(1) of I.D. Act but he has not been able to establish this plea adducing evidence as well as supporting document. The management in their W.S. mentioned that the AOC Labour Union is not recognized Union and during the relevant period the Mineral Oil Workers Union was recognized as majority Union; and as such, the plea of the



management cannot be discarded and the claim of the workman that he is "Protected workman" is found to be not established. Further on verification of the list of membership conducted by the Ministry of Labour and Employment it was ascertained that AOC has only 772 members.

8. In course of argument Mr. R. C. Barthakur, Administrative Officer, IOCL AOD submitted that the workman was transferred in the interest of the Company on exigency and the transfer is a condition of service and hence the workman is not entitled to any relief as claimed. Further the workman also failed to prove his case adducing any evidence, rather he abstained himself from appearing before the Court since after filing of his claim statement, in order to prove the alleged unfair labour practices by the management in transferring the workman mala fide, and to face the cross-examination by the management in the Court. Mr. Barthakur however mentioned that the workman after submitting representations and also admitting to raise some protest against the management for recalling the transfer order and after filing Writ Petition before the Hon'ble Gauhati High Court has failed to join his place of transfer. Even the workman since after receiving notice from the Tribunal was represented by the Jt. Secretary, AOC Labour Union and thereafter he remained absent without any step and as such, the conduct of the workman reveals that he has not accepted the transfer. Hence, the action of the management is legal and justified and as such, the workman is not entitled to any relief as claimed.

9. The MW-1, in his evidence categorically mentioned that upon moving the Hon'ble Gauhati High Court by the workman against the order of transfer of the workman the Hon'ble High Court was pleased to direct the workman to raise Industrial Dispute. While the AOC Labour Union raised the dispute, but the Government of India, *vide* their letter marked as Exhibit-C refused to refer the dispute and observing that the matter raised cannot be considered as Industrial Dispute on the following reason:

"It is reported that the transfer of the Office bearers of the claimant union is done as per the Standing Order of the corporation and transfer policy/rotation modality/guidelines as consented to by the union. Hence the matter raised can not be construed as an industrial dispute".

The Ministry has subsequently referred this dispute under clause (d) of Sub-Section (1) and Sub-Section-(2A) of Section 10 of the ID Act *vide* their letter No. L-30011/42/2013-IR(M) dated 21.02.2014 for adjudication. Clause-(d) of Sub-Section (1) of Section 10 which runs as under:

"10.: Reference of disputes to Boards, Courts or Tribunals-(1) Where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time by order in writing—

\* \* \* \* \*

(d) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, whether it relates to any matter specified in the Second Schedule or the Third Schedule, to a Tribunal for adjudication."

The second Schedule and third Schedule to the ID Act provides for the matter within the jurisdiction of Labour Court and on perusal of these 2nd and 3rd schedule of the aforesaid Act there is no mention of the transfer of the workman/employee. However there is also nothing on record to show that the transfer of the workman was not made as per provision of the Standing Order of the Assam Oil Company Ltd. due to exigency of work and in the interest of the Company. There is also no materials to show that the transfer of the workman was done mala fide or in gross violation of natural justice. Ordinarily the Civil Court has no jurisdiction to interfere with the transfer of the workman/employee except the transfer is made by the management mala fide or in gross violation of the principle of natural justice. Thus the argument raised by Mr. R.C. Barthakur for the management can not be rejected. Further the workman was transferred from one Department *i.e.* Admn. & Welfare Dept. to another Dept. *viz.* Tech. Service (HS &E) Deptt. Digboi within the same complex & hence I find no reason to believe that by such a transfer the management had put the workman to face inconvenience in due discharge of his Union activities. Hence, the allegation raised by the workman is found not sustained.

10. Considering the facts and circumstances of the case and having regard to the discussion and the findings arrived at as above, it can safely be held that the action of the management of Indian Oil Corporation Ltd. (AOD) in transferring Sri Tarun Hazarika, Employee No. 136209 is legal and justified and as such, the workman is not entitled to any relief as claimed. Accordingly, this reference is answered in negative. Let a copy of the no relief Award be forwarded to the Ministry as per procedure.

Given under my hand and seal of this Court on this 24th day of November, 2014, at Guwahati.

L.C. DEY, Presiding Officer

नई दिल्ली, 16 अप्रैल, 2015

**का.आ. 809.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इंडिया सीमेंट्स लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायलय, चेन्नई के पंचाट (संदर्भ संख्या 72/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 6/4/2015 को प्राप्त हुआ था।

[ सं० एल-29011/29/2013-आईआर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 16th April, 2015

**S.O. 809.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the award (Ref. I.D. No. 72/2013) of the Central Government Industrial Tribunal/Labour Court, Chennai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of India Cements Limited and their workman, which was received by the Central Government on 6/4/2015.

[No. L-29011/29/2013-IR (M)]  
JOHAN TOPNO, Under Secy.

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Tuesday, the 31st March, 2015

**Present:** K.P. PRASANNA KUMARI,

Presiding Officer

#### Industrial Dispute No. 72/2013

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of India Cement Ltd. and their workman)

#### BETWEEN

The Secretary : 1st Party/Petitioner Union  
Sankagiri Cement Alai  
Thozhilalar Munnetra Sangam  
Sankagiri West—637303  
Distt. Namkkal

#### AND

The General Manager : 2nd Party/Respondent  
M/s India Cements Ltd.  
Sankari West Post  
Distt. Salem—637303

#### Appearance :

For the 1st Party Petitioner/ : M/s. Rengaramanujam,  
Union J. Prathaban,  
Advocates

For the 2nd Party/Respondent : M/s. S. Jayaraman,  
H. Balaji, Advocates

#### AWARD

The Central Government, Ministry of Labour & employment *vide* is Order No. L-29011/29/2013-IR (M) dated 14.06.2013 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

"Whether the action of the Management of M/s. India Cements Ltd., Sankari regarding discharging the service of the workman, Sri. P. Krishnan *vide* order dated 12.01.2006 is justifiable? If not, what relief the workman is entitled to?"

2. On receipt of the Industrial Dispute this Tribunal has numbered it as ID 72/2013 and issued notices to both sides. Both sides have entered appearance through their counsel and have filed their claim and counter statement respectively.

3. The averments in the claim Statement filed by the petitioner in brief are these:

"The dispute was raised by Krishnan, a member of the Petitioner Union before the Assistant Labour Commissioner(C). Chennai challenging the termination order passed against him by the Respondent on 12.01.2006. During the pendency of the proceedings Krishnan died on 27.12.2011. The legal heirs of Krishnan had requested the Petitioner Union to appear in the case on their behalf. Accordingly, the Petitioner had appeared before the Assitt. Labour Commissioner (C). Conciliation proceedings ended in failure and the matter had been referred to this Tribunal on the basis of the failure report given by the Asstt. Labour Commissioner (C) to the Government Krishnan the concerned workman had joined as Mazdoor in the Mines Canteen of the Respondent in the year 1988. He was made permanent in the year 1989. He was later promoted as Driver in the Mines Department. Krishnan had served the Respondent without any blemish. A Charge Memo dated 24.11.2005 was issued to Krishnan alleging that he was unauthorizedly absent from duty for 23 days in the year 2005. Krishnan had submitted his explanation that his mother had to undergo an eye operation and he had to be in hospital with her and also that his Sister's husband had died. The Respondent refused to accept the explanation and ordered enquiry. The Enquiry Officer also did not accept the explanation given by Krishnan for his absence and entered a finding that the charges against Krishnan is proved. Krishnan availed leave with due permission of his superiors during the period from January to October 2005 intermittently on various dated. He was never absent for 7 days consecutively. The Enquiry Officer had failed to take note of the fact that absence of Krishnan was not willful. On the basis of the enquiry report Krishnan was discharged from service on 12.01.2006. The action of the Respondent is vindictive and arbitrary. The order of discharge passed by the Respondent is shocking disproportionate also. An order may be passed holding that the order of discharge of Krishnan from the service of the Respondent is not justified and also to treat Krishnan to have been in service from 12.01.2006, the date of discharge till 27.12.2011, the date of his death and to pay back wages due to him and other monetary and service benefits."

4. The Respondent has filed Counter Statement contending as below:

The Industrial Dispute is not maintainable in law. Krishnan, the concerned workman was working in the Mines Division of the Respondent situated at Sankari, Salem District. On verifying his attendance it was found that he has absented himself for 23 days during the period from January 2005 to October 2005 on various occasions without permission of his superiors and without prior intimation. His absence without permission caused severe dislocation of work in the Department. He was issued Charge sheet under the relevant Standing Orders and was also directed to submit his explanation. The explanation given by the workman was found unsatisfactory. So a domestic enquiry was conducted against the workman concerned. The workman had participated in the enquiry. He was discharged from service on 12.01.2006 as punishment for the misconduct committed by him. The dispute having been raised by Krishnan in his individual capacity the Petitioner Union cannot substitute itself or represent Krishnan or his legal heirs. The Trade Union was not authorized to raise or contest the dispute. The petition is liable to be dismissed.

5. The evidence in the case consists of oral evidence of WW1 and WW2 and MW1 and documents marked as Ext. W1 to Ext. W18 and Ext. M1 to Ext. M21.

**6. The Points for consideration are:**

(i) Whether the action of Management in discharging Krishnan from service is justifiable?

(ii) To what relief the petitioner is entitled?

**The Points**

7. The dispute is raised in view of discharge of Krishnan, a member of the Petitioner Union who was in the service of the Respondent. The Respondent has alleged that Krishnan was unauthorizedly absent from duty for 23 days intermittently during the period from January 2005 to October 2005 without any prior information or permission. A Charge Memo was issued to Krishnan. A domestic enquiry was conducted and Krishnan was discharged from service on 12.01.2006 on the basis of the report of the enquiry. Krishnan himself has raised the dispute in his individual capacity before the Asstt. Labour Commissioner (Central). However, Krishnan died during the pendency of the proceedings and the Petitioner Union has got into the shoes of Krishnan by filing Claim Statement before this Tribunal and proceeding with the dispute.

8. Before considering the core question *i.e.* the legality and justifiability of discharge of Krishnan from the service of the Respondent, a preliminary objection raised by the Respondent regarding the maintainability of the dispute is to be answered. It has been contended in the Counter Statement that the dispute is not maintainable in law. The argument that is advanced on behalf of the Respondent is

that Krishnan having raised the dispute under Section 2A of the ID Act before the Asstt. Labour Commissioner (Central), the Petitioner Union could not have substituted itself in the place of Krishnan and continued the proceedings before this Tribunal by filing a Claim Statement under Section 2A of the ID Act.

9. Of course, Section 2A of the ID Act is a remedy available to an individual workman. The Petitioner Union has filed the Claim Statement quoting Section 2A of the ID Act. It is pointed out by the counsel for the Respondent that the Union is not entitled to seek a remedy under Section-2A of the Act and the dispute if any by the Petitioner Union should have been raised under Section-2k of the Act. There can be no quarrel that this is the case. However merely because provision is wrongly quoted by the petitioner the Claim Statement need not be treated as one under Section-2A of the Act and not under Section-2k of the Act.

10. I am unable to accept the argument that the petitioner could not have filed Claim Statement here since the concerned workman himself has raised the dispute before the Asstt. Labour Commissioner (Central) also. In the Claim Statement itself the petitioner has stated that on death of Krishnan the legal heirs of Krishnan had approached the Union to take up the matter and proceed with the matter. The legal heirs of Krishnan is said to have written to the Asstt. Labour Commissioner (Central) giving consent to the Union to appear in the cases on their behalf. The Union seems to have appeared before the Labour Commissioner also. Documents are produced to show that Union is sufficiently authorized to proceed with the dispute. Ex. W15 is copy of the letter written by Krishnan to the Enquiry Officer of allow the Union representative to assist him. Ex. W16 is the letter written by the Union to the Respondent requesting to reinstate Krishnan in service. Lastly, there is Ext. W18, the resolution passed by the Union deciding to take up the cause of legal heirs of Krishnan based on the letter given by the wife of Krishnan. So there is sufficient authorization and there is a resolution passed in the meeting held by the Union to take up the cause. So I find that the attack made by the Respondent on the maintainability of the case is not sustainable.

11. Now the question is whether discharge of Krishnan from service on the charge of unauthorized absence from duty is justifiable. In the Claim Statement there is of course a vague contention that the domestic enquiry was not conducted in a proper manner. However, the reason given for this is that Enquiry Officer had not accepted the genuine reasons given by Krishnan for his absence. This is not a matter that affects the fairness of the enquiry but is a matter to be considered while considering the case on merits. As could be seen, Krishnan was sufficiently represented in the enquiry proceedings. So it could not be stated that the enquiry was not fair and proper.

12. Ex.M2 is the copy of the Charge Sheet issued to the deceased workman and Ext.M3 is the reply submitted by him, both in Tamil. I have got the documents translated and it is seen that the Charge Sheet is to the effect that Krishnan have been unauthorizedly absent from duty for 23 days and has thereby committed the misconduct under Section-19.1.f(q) of the Certified Standing Orders of the Company. In Ext.M3 Krishnan has stated even at that time that his absence was due to the eye surgery his mother had undergone and due to the death of his brother-in-law. The Respondent has examined his Time-Keeper to establish absence of Krishnan. The abstract of the Attendance Register is also seen produced in the enquiry proceedings along with other documents. On the same day the concerned workman was questioned by the Enquiry Officer and he is said to have admitted that the allegations mentioned in the Charge Sheet are true. He has further tried to justify his absence stating that his mother had undergone an eye operation and he was compelled to be with her in the hospital to assist her. He has also stated that he had lost his brother-in-law and had to take leave on loss of pay to attend his funeral and other ceremonies connected to it. He has also stated that he had never applied for leave on loss of pay on any prior occasions. He is said to have given an assurance before the Enquiry Officer that he will not repeat his conduct.

13. It could be seen from the report of enquiry that the Enquiry Officer found the charge established based on the evidence of the Time-Keeper and the alleged admission made by the concerned workman himself. The fact that was considered by the Enquiry Officer was whether the concerned workman was absent from duty during the days mentioned without seeking leave in advance. Regarding the case put forth by the workman that he was absent on account of reasons given by him, the Enquiry Officer has opined that the workman has not let in any documents to prove this.

14. When a charge of unauthorized absence is put on a workman it is not enough that his absence is established. The employer has to establish that absence from duty was willful and deliberate. There was not even a case for the Management that absence was willful and deliberate. The Enquiry Officer has not considered the question properly also.

15. The concerned workman was charged under Clause-19.1.f(q) of the Certified Standing Orders of the Company which states that habitual absence without leave or absence without leave for more than 8 consecutive days is a misconduct that entails the punishment of dismissal from service. It is a misconduct enumerated under the Standing Orders and therefore the Respondent could not have imposed punishment without establishing the charge. The Respondent having failed to establish that the absence was willful and deliberate, the charge could not be said to have been established also.

16. In any case the punishment imposed on the delinquent is shockingly disproportionate. There is no case for the Respondent that on previous occasions the concerned workman was absenting himself habitually. He seems to have been absent only during the spells given in the Charge Sheet and that also just for 23 days. The Respondent has immediately taken it upon it to put an end to the service of the concerned workman. In the decision in Jagdish Singh Vs. Punjab Engineering College and Others reported in 2009 7 SCC 301, the Apex Court while considering absence of a Sweeper for 15 days on four spells has observed that dismissal of the Sweeper from service was shockingly disproportionate to the offence charged. The Apex Court had modified the punishment to stoppage of two increments. In the present case absence was only for a period of 23 days and that also without any past history of absenteeism. The Respondent was not at all justified in imposing the punishment of discharge on the concerned workman.

17. The workman had died during the pendency of the proceedings. The workman who would have been entitled to a reinstatement if he was alive is to be deemed to have been in service from 12.01.2006, the date of discharge till 27.12.2011, the date of his death. He would be entitled to 50% of the back wages and other benefits including continuity of service.

Accordingly, the Respondent is directed to treat the concerned workman to have been in service from 12.01.2006 to 27.12.2011. 50% of the back wages and other attendant benefits due to the concerned workman shall be paid to his legal heirs within a month of the award. In case of default the Respondent is liable to pay interest @ 9% per annum from the date of the award.

K.P. PRASANNA KUMARI, Presiding Officer

#### Witnesses Examined:

For the 1st Party/Petitioner : WW1, Sri A. Manickam  
Union : WW1, Sri V.R. Ramasamy  
For the 2nd Party/ : MW1, Sri V.S. Muralidhar  
Management

#### Documents Marked:

##### On the petitioner's side

Ex.No.	Date	Description
Ex.W1	12.01.2006	Order of Discharge
Ex.W2	27.12.2011	Death Certificate
Ex.W3	21.02.2012	Representation of the legal heir
Ex.W4	21.04.1988	Order of Appointment
Ex.W5	24.11.2005	Show-Cause Notice



Ex.W6	28.11.2005	Reply of the delinquent	Ex.M11	—	Representation submitted by the deceased workman
Ex.W7	22.12.2005	Findings of the Enquiry Officer along with Proceedings	Ex.M12	26.06.2007	Representation submitted by the deceased workman to the Labour Enforcement Officer
Ex.W8	27.09.1965	Standing Order of the 2nd Party			
Ex.W9	Sept. 2005	Salary slip	Ex.M13	23.07.2007	Reply filed by the Second Party before the Labour Enforcement Officer
Ex.W10	Jan. 2005 to Oct. 2005	Attendance details of the delinquent			
Ex.W11	23.12.2005	Second Show Cause Notice	Ex.M14	27.04.2010	Additional reply submitted by the Second Party before the Labour Enforcement Officer
Ex.W12	02.01.2006	Explanation to the Show Cause Notice	Ex.M15	16.03.2011	Representation submitted by the Second Party before the Labour Enforcement Officer
Ex.W13	20.01.2006	Explanation to the Show Cause Notice			
Ex.W14	26.02.2007	Dispute before the Labour Officer (Central)	Ex.M16	21.06.2011	Representation submitted by the deceased workman to the Second Party
Ex.W15	21.12.2005	Letter of Mr. P. Krishnan to the Enquiry Officer	Ex.M17	02.07.2011	Police complaint submitted by the Second Party
Ex.W16	25.01.2006	Union letter to the 2nd Party	Ex.M18	08.02.2012	Representation submitted by the wife of deceased workman to the Second Party
Ex.W17	26.11.2009	Letter of Mr. Krishnan to the ALC (Central)			
Ex.W18	21.03.2012	Union Resolution	Ex.M19	04.05.2012	Letter sent by the Second Party to the wife of the deceased workman enclosing gratuity cheque

**On the Management's side**

Ex.No.	Date	Description	
Ex.M1	—	Basic Report	Ex.M20 29.10.2012 Full and final settlement of salary of the deceased Workman
Ex.M2	24.11.2005	Charge Sheet issued to the deceased workman	Ex.M21 16.01.2012 Reply Submitted by the Second Party before the Labour Enforcement Officer.
Ex.M3	28.11.2005	Reply submitted by the deceased workman	नई दिल्ली, 16 अप्रैल, 2015
Ex.M4	20.12.2005	Enquiry notice issued to the deceased workman	<b>का.आ. 810.</b> —औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ओएनजीसी लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, गुवाहाटी के पंचाट (संदर्भ संख्या 33/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 6.4.2015 को प्राप्त हुआ था।
Ex.M5	—	Attendance details of the deceased workman for the period from January to October, 2005	[सं एल-30012/56/2011-आईआर (एम )] जोहन तोपनो, अवर सचिव
Ex.M6	21.12.2005	Letter submitted by the deceased workman to the Enquiry Officer	New Delhi, the 16th April, 2015
Ex.M7	21.11.2005	Enquiry Proceedings	<b>S.O. 810.</b> —In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. I.D.No. 33/2013) of the Central Government Industrial Tribunal/Labour Court,
Ex.M8	23.12.2005	Second Show Cause Notice issued to the deceased Workman	
Ex.M9	02.01.2006	Reply submitted by the deceased workman	
Ex.M10	12.01.2006	Order to Discharge from service issued to the deceased workman	

Guwahati now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of O.N.G.C. Limited and their workman, which was received by the Central Government on 6.4.2015.

[No. L-30012/56/2011-IR(M)]  
JOHAN TOPNO, Under Secy.

#### ANNEXURE

#### IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, GUWAHATI

**Present:** Shri L.C. Dey, M..A. LL.B.,  
Presiding Officer,  
CGIT-Cum-Labour Court, Guwahati:  
In the matter of an Industrial Dispute  
between:—  
The Management of ONGC Limited, Kolkata.

**-Vs-**

The Workman Shri Jiban Chandra Das, Tripura  
(West).

**Ref. Case No. 33 of 2013**  
**Copy of order dated 23.03.2015**

**ORDER**  
23.03.2015

The Case Record put up today along with the order No. F. No. L-30012/45/2011-IR(M) dated 13.01.2015 from the Ministry of Labour and Employment along with a copy of the judgement and order (oral passed by the Hon'ble Guwahati High Court on 18.11.2014 in (1) W.P.(C) No. 5958 of 2013 (2) W.P. (C) No. 7372 of 2013 (3) W.P.(C) No. 7381 of 2013 (4) W.P. (C) No. 7385/2013 by which the Hon'ble Guwahati High Court has been pleased to dispose of the instant reference case and 45 Nos. of other reference cases together in the matter of an Industrial Dispute between the Management of ONGC Ltd. Kolkata (O. P/management) and the workman Sri Jiban Chandra Das, Tripura (west) (Claimant/workman).

This dispute arose between the employer in relation to the management of ONGC Ltd. and their workmen and the said dispute was referred to by the Ministry for adjudication *vide* their No. F. No. L-30012/56/2011-IR(M), dated 26.06.13. The schedule of this reference is as under:

"Whether the action of the management of ONGC Ltd. in terminating the services of workman Shri Jiban Chandra Das, S/o Sh. Manmohan Das, Ex. Contingent workman engaged in seismic survey work through their Geophysical Party *w.e.f.* 01.07.2011 in presence of settlement dated 27/28.01.2001, is legal and justified? What relief the concerned workman is entitled to?"

"The case of the claimant/workman, as it appears from the claim statement, in brief, is that he had been working as casual contingent workman under ONGC, Tripura since 13.12.1982 to work in the seismic survey section under geophysical Party No. 27 along with other workmen. But the management did not consider their genuine case for appointment on regular basis despite his long 20 years of unblemished, dedicated service rendered to the Management. The Hon'ble Guwahati High Court passed an order and judgement and decided the said issue in terms of Memorandum of settlement dt. 27/28.01.2001 executed by and between the Management and their workmen signed before the R.L.C. (C), Guwahati. Despite the above order of the Hon'ble High Court the management did not regularize the workmen rather the present workman has been terminated from service in July, 2001 without assigning any reason thereof, and the management in order to avoid the statutory obligation as provided u/s 25(F) of the I.D. Act, 1947 allowed the workmen to work 234/235 days in each calendar year with few intentional breaks, and thereby the management deliberately exercise unfair labour practice. In fact, the workman worked for more than 240 days on an average in every year. Thus the management have not complied with the terms of the said settlement. Hence, the workman prayed to adjudicate the present reference by pronouncing an award in favour of the claimant/workman.

On receipt of the order of reference from the Ministry this reference case was registered and notice were issued upon both the parties who appeared before this Tribunal. The workman submitted his claim statement along with the supporting documents. During pendency of this proceeding the management after obtaining time on few dates submitted a petition on 21.01.2014 stating that they have moved before the Hon'ble Guwahati High Court assailing, *inter-alia*, the order or reference and the subsequent notice issued there upon and the Hon'ble High Court passed on interim order dated 18.12.2013 staying the further proceeding of the reference. The management also submitted a copy of the order dated 18.12.2013 passed by the Hon'ble Guwahati High Court in W.P.(C) No. 7372/13. Accordingly the proceeding of this reference was stayed with effect from 21.01.2014 until further order.

On perusal of the letter dated 13.01.2015 issued by the Ministry of Labour and Employment along with the copy of the judgement and order (oral) passed by the Hon'ble High Court in Writ Petition No. W.P.(C) No. 7372/13 dated 18.11.14, it appears that the Hon'ble Gauhati High Court has been pleased to allow the Writ Petitions preferred by the management of ONGC challenging the claims of the workmen as well as the order of reference and the

subsequent notices issued thereupon by this Tribunal, on the ground that since the memorandum of settlement arrived at u/s 12(3) of the I.D. Act, 1947 in conciliation proceeding before the Regional Labour Commissioner (C) on 27th/28th January, 2001 and the same having been acted upon by all the concerned parties, there could not have been any occasion for the workmen involved in the writ petitions to raise a further dispute already stood settled as per the said settlement, and consequently no reference could have been made for adjudication for the issue raised; and set aside and quashed the reference under challenge with observation that consequently, the proceeding culminating from the said reference and pending before the Tribunal-cum-Labour Court shall also stand set aside and quashed.

In view of the above circumstances this reference is disposed of granting no relief to the workman.

L. C. DEY, Presiding Officer

नई दिल्ली, 16 अप्रैल, 2015

**का.आ. 811.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ओएनजीसी लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, गुवाहाटी के पंचाट (संदर्भ संख्या 13/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06/04/2015 को प्राप्त हुआ था।

[सं. एल-30012/57/2012-आई आर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 16th April, 2015

**S.O. 811.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. I.D. No. 13/2013) of the Central Government Industrial Tribunal-cum-Labour Court, Guwahati now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of O.N.G.C. Limited and their workman, which was received by the Central Government on 06/04/2015.

[No. L-30012/57/2012-IR(M)]

JOHAN TOPNO, Under Secy.

#### ANNEXURE

#### IN THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, GUWAHATI

**Present :** Shri L.C. Dey, M.A., LL.B.,

Presiding Officer,

CGIT-Cum-labour Court, Guwahati,

In the matter of an Industrial Dispute between:—

The Management of ONGC Limited, Kolkata.

- Vs -

Their Workman Shri Shyamal Paul, Tripura (West).

**Ref. Case No. 13 of 2013.**

**Copy of order dated 23.03.2015**

#### ORDER

23.03.2015

The Case Record put up today along with the order No. F.No. L-30012/45/2011-IR(M) dated 13.1.2015 from the Ministry of Labour and Employment along with a copy of the judgement and order (oral) passed by the Hon'ble Gauhati High Court on 18.11.2014 in (1) W.P. (C) No. 5958 of 2013 (2) W.P. (C) No. 7372 of 2013 (3) W.P. (C) No. 7381 of 2013 (4) W.P. (C) No. 7385/2013 by which the Hon'ble Guwahati High Court has been pleased to dispose of the instant reference case and 45 nos. of other reference cases together in the matter of an Industrial Dispute between the Management of ONGC Ltd. Kolkata (O.P/management) and the workman Sri Shyamal Paul, Tripura (west) (Claimant/workman).

This dispute arose between the employer in relation to the management of ONGC Ltd. and their workmen and the said dispute was referred to by the Ministry for adjudication *vide* their No. F. No. L-30012/57/2012-IR(M), dated 22.01.13. The schedule of this reference is as under:

"Whether the action of the management of ONGC Ltd., in terminating the services of workman Shri Shyamal Paul, Ex.Contingent workman engaged in seismic survey work through their Geophysical Party *w.e.f.* 01.07.2001 in presence of settlement dated 27/28.01.2001, is legal and justified? What relief the concerned workman is entitled to?"

The case of the claimant/workman, as it appears from the claim statement, in brief, is that he had been working as casual contingent workman under ONGC, Tripura since 1977-78 to work in the seismic survey section under geophysical Party No. 27/31 along with other workmen. But the management did not consider their genuine case for appointment on regular basis despite his long 20 years of unblemished, dedicated service rendered to the Management. The Hon'ble Gauhati High Court passed an order and judgment and decided the said issue in terms of Memorandum of settlement dt. 27/28.01.2001 executed by & between the Management & their workmen signed before

the R.L.C. (C), Guwahati, Despite the above order of the Hon'ble High Court the management did not regularize the workmen rather the present workman has been terminated from service in July, 2001 without assigning any reason thereof, and the management in order to avoid the statutory obligation as provided u/s 25(F) of the I.D. Act 1947 allowed the workmen to work 236/237 days in each calendar year with few intentional breaks, and thereby the management deliberately exercised unfair labour practice. In fact, the workman worked for more than 240 days on an average in every year. Thus the management have not complied with the terms of the said settlement. Hence, the workman prayed to adjudicate the present reference by pronouncing an award in favour of the claimant/workman.

On receipt of the order of reference from the Ministry this reference case was registered and notices were issued upon both the parties who appeared before this Tribunal. the workman submitted his claim statement along with the supporting documents. During pendency of this proceeding the management after obtaining time on few dates submitted a petition on 05.11.2013 stating that they have moved before the Hon'ble Gauhati High Court assailing, *inter- alia* the order or reference and the subsequent notice issued there upon and the Hon'ble High Court passed an interim order dated 07.10.2013 staying the further proceeding of the reference. The management also submitted a copy of the order dated 07.10.2013 passed by the Hon'ble Guwahati High Court in W.P.(C) No. 5958/13. Accordingly the proceeding of this reference was stayed with effect from 05.11.2013 until further order.

On perusal of the letter dated 13.1.15 issued by the Ministry of Labour and Employment along with the copy of the judgement and order (oral) passed by the Hon'ble High Court in Writ Petition No. W.P. (C) No. 7372/13 dated 18.11.14, it appears that the Hon'ble Guwahati High Court has been pleased to allow the Writ Petitions preferred by the management of ONGC challenging the claims of the workmen as well as the order of reference and the subsequent notices issued thereupon by this Tribunal, on the ground that since the memorandum of settlement arrived at u/s 12(3) of the I.D. Act, 1947 in conciliation proceeding before the Regional Labour Commissioner (c) on 27th/28th January, 2001 and the same having been acted upon by all the concerned parties, there could not have been any occasion for the workmen involved in the writ petitions to raise a further dispute already stood settled as per the said settlement, and consequently no reference could have been made for adjudication for the issue raised; and set aside and quashed the reference under challenge with observation that consequently, the proceeding culminating

from the said reference and pending before the Tribunal-cum-Labour Court shall also stand set aside and quashed.

In view of the above circumstances this reference is disposed of granting no relief to the workmen.

L.C. DEY, Presiding Officer

नई दिल्ली, 16 अप्रैल, 2015

**का.आ. 812.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ओएनजीसी लिमिटेड के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, गुवाहाटी के पंचाट (संदर्भ संख्या 14/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 6/4/2015 को प्राप्त हुआ था।

[सं एल-30012/56/2012-आई आर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 16th April, 2015

**S.O. 812.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. I.D. No. 14/2013) of the Central Government Industrial Tribunal/Labour Court, Guwahati now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of O.N.G.C. Limited and their workman, which was received by the Central Government on 6/4/2015.

[No.L-30012/56/2012-IR(M)]

JOHAN TOPNO, Under Secy.

#### ANNEXURE

#### IN THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL- CUM-LABOUR COURT, GUWAHATI

**Present:** Shri L.C. Dey, M.A. LL.B.,

Presiding Officer,

CGIT-Cum-Labour Court, Guwahati.

In the matter of an Industrial Dispute between:—

The management of ONGC Limited, Kolkata

-Vs-

Their Workman Shri Dibankar Choudhury,  
Tripura (West).

Ref. Case no. 14 of 2013.

Copy of order dated 23.03.2015



**ORDER**

23.03.2015

The Case Record put up today along with the the order No. F. No. L-30012/45/2011-IR(M) dated 13.1.2015 from the Ministry of Labour and Employment along with a copy of the judgment and order (oral) passed by the Hon'ble Guwahati High Court on 18.11.2014 in (1) W.P. (C) No. 5958 of 2013 (2) W.P. (C) No. 7372 of 2013 (3) W.P. (C) No. 7381 of 2013 (4) W.P.(C) No. 7385/2013 by which the Hon'ble Gauhati High Court has been pleased to dispose of the instant reference case and 45 Nos. of other reference cases together in the matter of an industrial dispute between the Management of ONGC Ltd. Kolkata (O.P/management) and the workman Sri Dibankar Choudhury, Tripura (west) (Claimant/workman).

The dispute arose between the employer in relation to the management of ONGC Ltd. and their workman and the said dispute was referred to by the Ministry for adjudication *vide* their No. F No. L-30012/56/2012-IR(M), dated 22.03.2013. The schedule of the reference is as under:

"Whether the action of the management of ONGC Ltd., in terminating the services of workman Shri Dibankar Choudhury, Ex.Contingent workman engaged in seismic survey work through their Geophysical Party *w.e.f.* 01.07.2001 in presence of settlement dated 27/28/01.2001, is legal and justified? What relief the concerned workman is entitled to?

The case of the claimant/workman, as it appears from the claim statement, in brief, is that he had been working as casual contingent workman under ONGC, Tripura since 1977-78 to work in the seismic survey section under geophysical Party No. 27/31 along with other workman, But the management did not consider their genuine case for appointment on regular basis despite his long 20 years of unblemished, dedicated service rendered to the Management. The Hon'ble Gauhati High Court passed an order and judgment and decided the said issue in terms of Memorandum of settlement dt. 27/28.01.2001 executed by and between the Management and their workmen signed before the R.L.C.(C) Guwahati. Despite the above order of the Hon'ble High Court the management did not regularize the workmen rather the present workman has been terminated from service on 2001 without assigning any reason thereof, and the management in order to avoid the statutory obligation as provided u/s 25(F) of the I.D. Act 1947 allowed the workmen to work 236/237 days in each

calendar year with few intentional breaks, and thereby the management deliberately exercised unfair labour practice. In fact, the workman worked for more than 240 days on an average in every year. Thus the management have not complied with the terms of the said settlement. Hence, the workman prayed to adjudicate the present reference by pronouncing an award in favour of the claimant/workman.

On receipt of the order of reference from the Ministry this reference case was registered and notices were issued upon both the parties who appeared before this Tribunal. The workman submitted his claim statement along with the supporting documents. During pendency of this proceeding the management after obtaining time on few dates submitted petition on 05.11.2013 stating that they have moved before the Hon'ble Gauhati High Court assailing, *inter-alia*, the order or reference and the subsequent notice issued there upon and the Hon'ble High Court passed an interim order dated 07.10.2013 staying the further proceeding of the reference. The management also submitted a copy of the order dated 07.10.2013 passed by the Hon'ble Gauhati High Court in W.P.(C) No. 5958/13. Accordingly the proceeding of this reference was stayed with effect from 05.11.2013 until further order.

On perusal of the letter dated 13.1.15 issued by the Ministry of Labour and Employment along with copy of the judgment and order (oral) passed by the Hon'ble High Court in Writ Petition No. W.P (C) No. 7372/13 dated 18.11.14, it appears that the Hon'ble Gauhati High Court has been pleased to allow the Writ Petitions preferred by the management of ONGC challenging the claims of the workman as well as the order of reference and the subsequent notices issued thereupon by this Tribunal, on the ground that since the memorandum of settlement arrived at u/s 12(3) of the I.D. Act, 1947 in conciliation proceeding before the Regional Labour Commissioner (C) on 27th/28th January, 2001 and the June having been acted upon by all the concerned parties, there could not have been any occasion for the workmen involved in the writ petitions to raise a further dispute already stood settled as per the said settlement, and consequently no reference could have been made for adjudication for the issue raised; and set aside and quashed the reference under challenge with observation that consequently, the proceeding culminating from the said reference and pending before the Tribunal-cum-Labour Court shall also stand set aside and quashed.

In view of the above circumstances this reference is disposed of granting no relief to the workman.

L. C. DEY, Presiding Officer

नई दिल्ली, 16 अप्रैल, 2015

**का.आ. 813.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ओएनजीसी लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, गुवाहाटी के पंचाट (संदर्भ संख्या 29/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06/04/2015 को प्राप्त हुआ था।

[सं० एल०-30012/52/2011-आई आर (एम)]  
जोहन तोपनो, अवर सचिव

New Delhi, the 16th April, 2015

**S.O. 813.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award Ref. I.D. No. 29/2013) of the Central Government Industrial Tribunal-cum-Labour Court, Guwahati now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the O.N.G.C. Limited and their workman, which was received by the Central Government on 06/04/2015.

[No. L-30012/52/2011-IR(M)]  
JOHAN TOPNO, Under Secy.

#### ANNEXURE

#### IN THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL- CUM-LABOUR COURT, GUWAHATI

**Present:** Shri L.C. Dey, M.A., LL.B.,  
Presiding Officer,

CGIT-Cum-labour Court, Guwahati,

In the matter of an Industrial Dispute between:—

The Management of ONGC Limited, Kolkata.

-VS-

Their Workman Shri Anil Chandra kar, Tripura (West).

**Ref. Case No. 29 of 2013**  
Copy of order dated 24.03.2015

#### ORDER

The Case Record put up today along with the order No. F. No. L-30012/45/2011-IR(M) dated 13.1.2015 from the Ministry of Labour and Employment along with a copy of the judgment and order (oral) passed by the Hon'ble Gauhati High Court on 18.11.2014 in (1) W.P. (C) No. 5958 of 2013 W.P. (C) No. 7372 of 2013 (3) W.P. (C) No. 7381 of 2013 (4) W.P. (C) No. 7385/2013 by which the Hon'ble Gauhati High Court has been pleased to dispose of the instant reference case and 45 nos. of other reference cases together in the matter of an Industrial Dispute between the Management of ONGC Ltd. Kolkata (O.P/management) and the workman Sri Anil Chandra Kar, Tripura (west) (Claimant/workman).

This dispute arose between the employer in relation to the management of ONGC Ltd. and their workman and the said dispute was referred to by the Ministry for adjudication vide their No. L-30012/56/2012-IR(M) dated 22.01.2013. The schedule of this reference is as under.

"Whether the action of the management of ONGC Ltd., in terminating the services of workman Shri Anil Chandra Kar, S/o Late Sh. Narendra Ch. Kar, Ex. Contingent workman engaged in seismic survey work through their Geophysical Party w.e.f. 01.07.2001 in presence of settlement dated 27/28.01.2001, is legal and justified? What relief the concerned workman is entitled to?

The case of the claimant/workman, as it appears from the claim statement, in brief, is that he had been working as casual contingent workman under ONGC, Tripura since 1981-82 to work in the seismic survey section under geophysical Party No. 21 along with other workman. But the management did not consider their genuine case for appointment on regular basis despite his long 20 years of unblemished, dedicated service rendered to the Management. The Hon'ble Gauhati High court passed an order and judgment and decided the said issue in terms of Memorandum of settlement dt. 27/28.01.2001 executed by and between the Management and their workmen signed before the R.L.C. (C), Guwahati. Despite the above order of the Hon'ble High Court the management did not regularize the workman rather the present workman has been terminated from service in July, 2001 without assigning any reason thereof, and the management in order to avoid the statutory obligation as provided u/s 25(F) of the I.D. Act 1947 allowed to work the workmen allowed to work 236/235 days in each calendar year with few international breaks, and thereby the management deliberately exercised unfair labour practice. In fact, the workman worked for more than 240 days on an average in every year. Thus the management have not complied with the terms of the said settlement. Hence, the workman prayed to adjudicate the present reference by pronouncing an award in favour of the claimant/workman.

On receipt of the order of reference from the Ministry this reference case was registered and notices were issued upon both the parties who appeared before this Tribunal. The workman submitted his claim statement along with the supporting documents. During pendency of this proceeding the management after obtaining time on few dates submitted a petition on 05.04.2013 stating that they have moved before the Hon'ble Gauhati High Court assailing, *inter-alia*, the order or reference and the subsequent notice issued there upon and the Hon'ble High Court passed an interim order dated 07.10.2013 staying the further proceeding of the reference. The management also submitted a copy of the order dated 07-10-2013 passed by the Hon'ble Gauhati High Court in W.P.(C) No. 5958/13. Accordingly the proceeding of this reference was stayed with effect from 05.11.2013 until further order.

On perusal of the letter dated 13.1.15 issued by the Ministry of Labour and Employment along with the copy of the judgment and order (oral) passed by the Hon'ble High Court in Writ Petition No. W.P.(C) No. 7372/13 dated 18.11.14, it appears that the Hon'ble Gauhati High Court has been pleased to allow the Writ Petitions preferred by the management of ONGC challenging the claims of the workmen as well as the order of reference and the subsequent notices issued thereupon by this Tribunal, on the ground that since the memorandum of settlement arrived at u/s 12(3) of the I.D. Act, 1947 in conciliation proceeding before the Regional Labour Commissioner (C) on 27th/28th January, 2001 and the same having been acted upon by all the concerned parties, there could not have been any occasion for the workman involved in the writ petitions to raise a further dispute already stood settled as per the said settlement, and consequently no reference could have been made for adjudication for the issue raised, and set aside and quashed the reference under challenge with observation that consequently, the proceeding culminating from the said reference and pending before the Tribunal-cum-Labour shall also stand set aside and quashed.

In view of the above circumstances this reference is disposed of granting no relief to the workman.

L.C. DEY, Presiding Officer

नई दिल्ली, 16 अप्रैल, 2015

**का.आ. 814.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ओएनजीसी लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, गुवाहाटी के पंचाट (संदर्भ संख्या 34/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 6/4/2015 को प्राप्त हुआ था।

[सं एल-30012/57/2011-आई आर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 16th April, 2015

**S.O. 814.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. I.D.No. 34/2013) of the Central Government Industrial Tribunal/Labour Court, Guwahati now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of O.N.G.C. Limited and their workman, which was received by the Central Government on 6/4/2015.

[No. L-30012/57/2011-IR(M)]

JOHAN TOPNO, Under Secy.

## ANNEXURE

### IN THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, GUWAHATI

**Present:** Shri L.C. Dey, M.A., L.L.B.,  
Presiding Officer,

CGIT-Cum-Labour Court, Guwahati

In the matter of an Industrial Dispute  
between:—

The Management of ONGC Limited, Kolkata

**Vs**

Their Workman Sri Satyagopal Deb Nath  
Tripura (West)

Ref. Case No. 34 of 2013

Copy of order dated 23.03.2015

## ORDER

The Case Record put up today along with the order No. F.No. L-30012/45/2011-IR(M) dated 13.1.2015 from the Ministry of Labour and Employment along with a copy of the judgment and order (oral) passed by the Hon'ble Gauhati High Court on 18.11.2014 in (1) W.P.(C) No. 5958 of 2013 (2) W.P.(C) No. 7372 of 2013 (3) W.P.(C) No. 7381 of 2013 (4) W.P.(C) No. 7385/2013 by which the Hon'ble Gauhati High Court has been pleased to dispose of the instant reference case and 45 Nos. of other reference cases together in the matter of an Industrial Dispute between the Management of ONGC Ltd. Kolkata (O.P/Management) and the workman Sri Shyemal Paul, Tripura (west) (Claimant/workman).

This dispute arose between the employer in relation to the management of ONGC Ltd. and their workmen and the said dispute was referred to by the Ministry for adjudication vide their No F.No. L-30012/57/2011-IR(M), dated 26.06.13. The schedule of this reference is as under:

"Whether the action of the management of ONGC Ltd., in terminating the services of workman Shri Satyagopal Deb Nath S/o Late Sh. Hari Narayam Dev Nath, Contingent workman engaged in seismic survey work through their Geophysical Party w.e.f. 01.07.2001 in presence of settlement dated 27/28.01.2001, is legal and justified? What relief the concerned workman is entitled to?"

The case of the claimant/workman, as it appears from the claim statement, in brief, is that he had been working as casual contingent workman under ONGC, Tripura since 1977-78 to work in the seismic survey section under geophysical Party No. 231 along with other workmen. But the management did not consider their genuine case for appointment on regular basis despite his long 20 years of unblemished, dedicated service rendered to the Management. The Hon'ble Gauhati High Court passed an order and judgment and decided the said issue in terms of Memorandum of settlement

dt. 27/28.01.2001 executed by & between the Management & their workmen signed before the R.L.C(C), Guwahati. Despite the above order of the Hon'ble High Court the management did not regularize the workmen rather the present workman has been terminated from service in July, 2001 without assigning any reason thereof, and the management in order to avoid the statutory obligation as provided u/s 25(F) of the I.D. Act 1947 allowed the workmen to work less than 240 days in each calendar year with few intentional breaks, and thereby the management deliberately exercised unfair labour practice. In fact, the workman worked for more than 240 days on an average in every year. Thus the management have not complied with the terms of the said settlement. Hence, the workman prayed to adjudicate the present reference by pronouncing an award in favour of the claimant/workman.

On receipt of the order of reference from the Ministry this reference case was registered and notices were issued upon both the parties who appeared before this Tribunal. The workman submitted his claim statement along with the supporting documents. During pendency of this proceeding the management after obtaining time on few dates submitted a petition on 05.11.2013 stating that they have moved before the Hon'ble Gauhati High Court assailing, *inter-alia*, the order or reference and the subsequent notice issued there upon and the Hon'ble High Court passed an interim order dated 07.10.2013 staying the further proceeding of the reference. The management also submitted a copy of the order dated 07.10.2013 passed by the Hon'ble Gauhati High Court in W.P.(C) No. 5958/13. Accordingly the proceeding of this reference was stayed with effect from 05.11.2013 until further order.

On perusal of the letter dated 13.1.15 issued by the Ministry of Labour and Employment along with the copy of the judgment and order (oral) passed by the Hon'ble High Court in Writ Petition No. W.P.(C) No.7372/13 dated 18.11.14, it appears that the Hon'ble Gauhati High Court has been pleased to allow the Writ Petitions preferred by the Management of ONGC challenging the claims of the workmen as well as the order of reference and the subsequent notices issued thereupon by this Tribunal, on the ground that since the memorandum of settlement arrived at u/s 12(3) of the I.D. Act, 1947 in conciliation proceeding before the Regional Labour Commissioner (C) on 27th 28th January, 2001 and the same having acted upon by all the concerned parties, there could not have been any occasion for the workmen involved in the writ petitions to raise a further dispute already stood settled as per the said settlement, and consequently no reference could have been made for adjudication for the issue raised; and set aside and quashed the reference under challenge with observation that consequently, the proceeding culminating from the said reference and pending before the Tribunal-cum-Labour Court shall also stand set aside and quashed.

In view of the above circumstances this reference is disposed of granting no relief to the workman.

L. C. DEY, Presiding Officer

नई दिल्ली, 16 अप्रैल, 2015

**का.आ. 815.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ओ.एन.जी.सी. लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय गुवाहाटी के पंचाट (संदर्भ संख्या 28/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06.04.2015 को प्राप्त हुआ था।

[सं एल-30012/51/2011-आईआर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 16th April, 2015

**S.O. 815.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.I.D. No. 28/2013) of the Central Government Industrial-cum-Labour Court, Guwahati now as shown in the Annexure, in the industrial dispute between the management of ON.G.C. Limited and their workmen, received by the Central Government on 06.04.2015.

[No. L-30012/51/2011-IR(M)]

JOHAN TOPNO, Under Secy.

#### ANNEXURE

#### IN THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL- CUM-LABOUR COURT, GUWAHATI

**Present:** Shri L.C. Dey, M.A., LL.B.  
Presiding Officer,  
CGIT-Cum-Labour Court, Guwahati  
In the matter of an Industrial Dispute between:  
The Management of ONGC Limited, Kolkata.

vs

Their workman Shri Shankar Narayan Ghose.,  
Tripura (West)

Ref. Case No. 28 of 2013  
Copy of order dated 24.3.2015

#### ORDER

The Case Record put up today along with the order No. F.No. L-300012/45/2011-IR(M) dated 13.1.2015 from the Ministry of Labour and Employment along with a copy of the judgement and order (oral) passed by the Hon'ble Gauhati High Court on 18.11.2014 in (1) W.P.(C) No. 5958 of 2013 (2) W.P.(C) No. 7372 of 2012 (3) W.P.(C) No. 7381 of 2013 (4) W.P.(C) No. 7385/2013 by which the Hon'ble Gauhati High Court has been pleased to dispose of the instant reference case and 4 Nos. of other reference cases together



in the matter of an Industrial Dispute between the Management of ONGC Ltd. Kolkata (O.P./management) and the workman Sri Anil Chandra Kar, Tripura (West) (Claimant/Workman).

This dispute arose between the employer in relation to the management of ONGC Ltd. and their workmen and the said dispute was referred to by the Ministry for adjudication vide their No. F.No. L-30012/52/2011-IR(M) dated 26.06.13. The schedule of this reference is as under:

"Whether the action of the management of ONGC Ltd., in terminating the services of workman Shri Shankar Narayan Ghosh, S/o Shri Anil Kumar Ghos, Ex. Contingent workman engaged in seismic survey work through their Geophysical Party w.e.f. 01.07.2001 in presence of settlement dated 27/28.01.2001, is legal and justified? What relief the concerned workman is entitled to?"

The case of the claimant/workman, as it appears from the claim statement, in brief, is that he had been working as casual contingent workman under ONGC, Tripura since 1982-83 to work in the seismic survey section under geophysical Party No. 27 along with other workmen. But the management did not consider their genuine case for appointment on regular basis despite his long 20 years of unblemished, dedicated service rendered to the Management. The Hon'ble Gauhati High Court passed an order and judgment and decided the said issue in terms of Memorandum of settlement dt. 27/28.01.2001 executed by and between the Management and their workmen signed before the R.L.C.(C), Guwahati. Despite the above order of the Hon'ble High Court the management did not regularize the workmen rather the present workman has been terminated from service in July, 2001 without assigning any reason thereof, and the management in order to avoid the statutory obligation as provided u/s 25(F) of the I.D. Act 1947 Paid Cash to the workmen for the period of working 236/237 days in each calendar year with few intentional breaks, and thereby the management deliberately exercised unfair labour practice. In fact, the workman worked for more than 240 days on an average in every year. Thus the management have not complied with the term of the said settlement. Hence, the workman prayed to adjudicate the present reference by pronouncing an award in favour of the claimant/workman.

On receipt of the order of reference from the Ministry this reference case was registered and notices were issued upon both the parties who appeared before this Tribunal. The workman submitted his claim statement along with the supporting documents. During pendency of this proceeding the management after obtaining time on few dates submitted a petition on 20.01.2014 stating that they have moved before the Hon'ble Gauhati High court assailing, inter-alia, the order or reference and the subsequent notice issued there upon and the Hon'ble High Court passed an interim order dated 18.12.2013 staying the further proceeding of the reference.

The management also submitted a copy of the order dated 18.12.2013 passed by the Hon'ble Gauhati High Court in W.P.(C) No. 7372/13. Accordingly the proceeding of this reference was stayed with effect from 20.01.2014 until further order.

On perusal of the letter dated 13.1.15 issued by the Ministry of Labour and Employment along with the copy of the judgment and order (oral) passed by the Hon'ble High Court in Writ Petition No.W.P(C) No.7372/13 dated 18.11.14, it appears that the Hon'ble Gauhati High Court has been pleased to allow the Writ Petitions preferred by the management of ONGC challenging the claims of the workmen as well as the order of reference and the subsequent notices issued thereupon by this Tribunal, on the ground that since the memorandum of settlement arrived at u/s 12(3) of the I.D.Act, 1947 in conciliation proceeding before the Regional Labour Commissioner (C) on 27th/28th January, 2001 and the same having been acted upon by all the concerned parties, there could not have been any occasion for the workmen involved in the writ petitions to raise a further dispute already stood settled as per the said settlement, and consequently no reference could have been made for adjudication for the issue raised; and set aside and quashed the reference under challenge with observation that consequently, the proceeding culminating from the said reference and pending before the Tribunal-cum-Labour Court shall also stand set aside and quashed.

In view of the above circumstances this reference is disposed of granting no relief to the workman.

L. C. DEY, Presiding Officer

नई दिल्ली, 16 अप्रैल, 2015

**का.आ. 816.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ओएनजीसी लिमिटेड के प्रबंधन के संबंध में निर्योक्तों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, गुवाहाटी के पंचाट (सदर्थ संख्या 35/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 6/4/2015 को प्राप्त हुआ था।

[सं एल-30012/58/2011-आई आर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 16th April, 2015

**S.O. 816.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. I.D.No. 35/2013) of the Central Government Industrial Tribunal/Labour Court, Guwahati now as shown in the Annexure in the Industrial Dispute between the employers in relation to the

management of O.N.G.C.Limited and their workman, which was received by the Central Government on 6/4/2015.

[No. L-30012/58/2011-IR(M)]  
JOHAN TOPNO, Under Secy.

#### ANNEXURE

#### IN THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL- CUM-LABOUR COURT, GUWAHATI

**Present:** Shri L.C. DEY, M.A., LL.B.,  
Presiding Officer,  
CGIT-cum-labour Court, Guwahati.

In the matter of an Industrial Dispute between:-  
The Management of ONGC Limited, Kolkata.

VS

Their Workman Sri Dasarath Deb Barma, Tripura  
(West).

Ref. Case No. 35 of 2013. Copy of order dated  
24.03.2015.

#### ORDER

24.03.2015

The Case Record put up today along with the order No. F.No.L-30012/45/2011-IR(M) dated 13.1.2015 from the Ministry of Labour and Employment along with a copy of the judgment and order (oral) passed by the Hon'ble Gauhati High Court on 18.11.2014 in (1) W.P.(C) No. 5958 of 2013 (2) W.P.(C) No. 7372 of 2013 (3) WP(C) No. 7381 of 2013 (4) W.P.(C) No. 7385/2013 by which the Hon'ble Gauhati High Court has been pleased to dispose of the instant reference case and 45 nos. of other reference cases together in the matter of an Industrial Dispute between the Management of ONGC Ltd. Kolkata (O.P/management) and the workman Sri Dasarath Deb Barma, Tripura (west) (Claimant/workman).

This dispute arose between the employer in relation to the management of ONGC Ltd. and their workmen and the said dispute was referred to by the Ministry for adjudication vide their No.F No. L.-30012/58/2011-IR(M), dated 26.06.13. The schedule of this reference is as under:

"Whether the action of the management of ONGC Ltd., in terminating the services of workman Shri Dasarath Deb Barma, S/o Late Sh. Malindra Deb Barma, Ex.Contingent workman engaged in seismic survey work through their Geophysical Party w.e.f. 01.07.2001 in presence of settlement dated 27/28.01.2001, is legal and justified? What relief the concerned workman is entitled to?"

The case of claimant/workman, as it appears from the claim statement, in brief, is that he had been working as casual contingent workman under ONGC, Tripura since 1-12-1982 to work in the seismic survey section under

geophysical Party No. 27 along with other workmen. But the management did not consider their genuine case for appointment on regular basis despite his long 20 years of unblemished, dedicated service rendered to the Management. The Hon'ble Gauhati High Court passed an order and judgment and decided the said issue in terms of Memorandum of settlement dt. 27/28/01.2001 executed by & between the Management & their workmen signed before the R.L.C.(C), Guwahati, Despite the above order of the Hon'ble High Court the management did not regularize the workmen rather the present workman has been terminated from service in July, 2001 without assigning any reasons thereof, and the management in order to avoid the statutory obligation as provided u/s 25(F) of the I.D. Act 1947 allowed the workmen to work less than 240 days in each calendar year with few intentional breaks, and thereby the management deliberately exercised unfair labour practice. In fact, the workman worked for more than 240 days on an average in every year. Thus the management have not complied with the terms of the said settlement. Hence, the workman prayed to adjudicate the present reference by pronouncing an award in favour of the claimant/Workman.

On receipt of the order of reference from the Ministry this reference case was registered and notices were issued upon both the parties who appeared before this Tribunal. The workman submitted his claim statement along with the supporting documents. During pendency of this proceeding the management after obtaining time on few dates submitted a petition on 21.01.2014 stating that they have moved before the Hon'ble Gauhati High Court assailing, *inter-alia*, the order of reference and the subsequent notice issued there upon and the Hon'ble High Court passed an interim order dated 18.12.2013 staying the further proceeding of the reference. The management also submitted a copy of the order dated 18.12.2013 passed by the Hon'ble Gauhati High Court in W.P.(C) No. 7372/13. Accordingly the proceeding of this reference was stayed with effect from 21.01.2014 until further order.

On perusal of the letter dated 13.1.15 issued by the Ministry of Labour and Employment along with the copy of the judgment and order (oral) passed by the Hon'ble High Court in Writ Petition No. W.P.(C) No. 7372/13 dated 18.11.14, it appears that the Hon'ble Gauhati High Court has been pleased to allow the Writ Petitions preferred by the management of ONGC challenging the claims of the workmen as well as the order of reference and the subsequent notices issued thereupon by this Tribunal, on the ground that since the memorandum of settlement arrived at u/s 12(3) of the I.D. Act, 1947 in conciliation proceeding before the Regional Labour Commissioner (C) on 27th/28th January, 2001 and the same having been acted upon by all the concerned parties, there could not have been any occasion for the workmen involved in the writ petitions to raise a further dispute already stood settled as per the said

settlement, and consequently no reference could have been made for adjudication for the issue raised; and set aside and quashed the reference under challenges with observation that consequently, the proceeding culminating from the said reference and pending before the Tribunal-cum-Labour Court shall also stand set aside and quashed.

In view of the above circumstances this reference is disposed of granting no relief to the workman.

L.C. DEY, Presiding Officer

नई दिल्ली, 16 अप्रैल, 2015

**का.आ. 817.**—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ओएनजीसी लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, गुवाहाटी के पंचाट (संदर्भ सं 27/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 06.04.2015 को प्राप्त हुआ था।

[सं एल-30012/50/2011-आईआर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 16th April, 2015

**S.O. 817.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. I.D. No. 27/2013) of the Central Government Industrial Tribunal/Labour Court, Guwahati now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of O.N.G.C. Limited and their workmen, which was received by the Central Government on 6.4.2015.

[No. L-30012/50/2011-IR (M)]

JOHAN TOPNO, Under Secy.

#### ANNEXURE

#### IN THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL- CUM-LABOUR COURT, GUWAHATI

**Present:** Shri L.C. Dey, M.A., LL.B.,  
Presiding Officer,  
CGIT-cum-Labour Court, Guwahati.

In the matter of an Industrial Dispute between:—

The Management of ONGC Limited, Kolkata

- Vs. -

Their Workman Sri Jitendra Sarkar, Tripura (West)

**Ref. Case No. 27 of 2013**  
Copy of order dated 24.03.2015

#### ORDER

24.03.2015

The Case Record put up today along with the order No. F.No.L-30012/45/2011-IR(M) dated 13.1.2015 from the Ministry of Labour and Employment along with a copy of the judgment and order (oral) passed by the Hon'ble Gauhati High Court on 18.11.2014 in (1) W.P. (C) No. 5958 of 2013 (2) W.P.(C) No. 7372 of 2013 (3) W.P.(C) No. 7381 of 2013 (4) W.P.(C) No. 7385/2013 by which the Hon'ble Guwahati High Court has been pleased to dispose of the instant reference case and 45 nos. of other reference cases together in the matter of an Industrial Dispute between the Management of ONGC Ltd. Kolkata (O.P./management) and the workman Sri Jitendra Sarkar, Tripura (West) (Claimant/ Workman).

This dispute arose between the employer in relation to the management of ONGC Ltd. and their workmen and the said dispute was referred to by the Ministry for adjudication *vide* their No. F.No. L-30012/50/2011-IR(M), dated 26.06.13. The schedule of this reference is as under:

"Whether the action of the management of ONGC Ltd., in terminating the services of workman, Shri Jitendra Sarkar S/o Late Sh. Krishnadhan Sarkar, Ex.Contingent workman engaged in seismic survey work through their Geophysical Party *w.e.f.* 01.07.2001 in presence of settlement dated 27/28.01.2001, is legal and justified? What relief the concerned workman is entitled to?

The case of the claimant/workman, as it appears from the claim statement, in brief is that he had been working as casual contingent workman under ONGC, Tripura since 15.5.1982 to work in the seismic survey section under geophysical Party No. 27 and along with other workmen. But the management did not consider their genuine case for appointment on regular basis despite his long 20 years of unblemished, dedicated service rendered to the Management. The Hon'ble Gauhati High Court passed an order and judgement and decided the said issue in terms of Memorandum of settlement dt. 27/28.01.2001 executed by & between the Management & their workmen signed before the R.L.C.(C), Guwahati. Despite the above order of the Hon'ble High Court the management did not regularize the workmen rather the present workman has been terminated from service in July, 2001 without assigning any reason thereof, and the management in order to avoid the statutory obligation as provided u/s 25(F) of the I.D. Act, 1947 allowed the workmen to work 236 days in each calendar year with few intentional breaks, and thereby the management deliberately exercised unfair labour practice. In fact, the workman worked for more than 240 days on an average in every year. Thus the management have not complied with the terms of the said settlement. Hence, the workman prayed to adjudicate the present reference by pronouncing an award in favour of the claimant/workman.

On receipt of the order of reference from the Ministry this reference case was registered and notices were issued upon both the parties who appeared before this Tribunal. The workman submitted his claim statement along with the supporting documents. During pendency of this proceeding the management after obtaining time on few dates submitted a petition on 16.01.2014 stating that they have moved before the Hon'ble Gauhati High Court assailing, inter-alia, the order of reference and the subsequent notice issued there upon and the Hon'ble High Court passed an interim order dated 18.12.2013 staying the further proceeding of the reference. The management also submitted a copy of the order dated 18.12.2013 passed by the Hon'ble Gauhati High Court in W.P.(C) No. 7372/13. Accordingly the proceeding of this reference was stayed with effect from 20.01.2014 until further order.

On perusal of the letter dated 13.1.15 issued by the Ministry of Labour and Employment along with the copy of the judgement and order (oral) passed by the Hon'ble High Court in Writ Petition No. W.P. (C) No. 7372/13 dated 18.11.14, it appears that the Hon'ble Gauhati High Court has been pleased to allow the Writ Petitions preferred by the management of ONGC challenging the claims of the workmen as well as the order of reference and the subsequent notices issued thereupon by this Tribunal, on the ground that since the memorandum of settlement arrived at u/s 12(3) of the I.D. Act, 1947 in conciliation proceeding before the Regional Labour Commissioner(C) on 27th/28th January, 2001 and the same having been acted upon by all the concerned parties, there could not have been any occasion for the workmen involved in the writ petitions to raise a further dispute already stood settled as per the said settlement, and consequently no reference could have been made for adjudication for the issue raised; and set aside and quashed the reference under challenge with observation that consequently, the proceeding culminating from the said reference and pending before the Tribunal-cum-Labour Court shall also stand set aside and quashed.

In view of the above circumstances this reference is disposed of granting no relief to the workman.

L. C. DEY, Presiding Officer

नई दिल्ली, 16 अप्रैल, 2015

**का.आ. 818.**—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ओएनजीसी लिमिटेड के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, गुवाहाटी के पंचाट; (संदर्भ संख्या 24/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 6/4/2015 को प्राप्त हुआ था।

[सं एल-30012/46/2011-आई आर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 16th April, 2015

**S.O. 818.**—In the pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), in the Central Government hereby publishes the award (Ref. I.D. No. 24/2013) of the Central Government Industrial Tribunal/Labour Court, Guwahati now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of O.N.G.C. Limited and their workman, which was received by the Central Government on 6/4/2015.

[No. L-30012/46/2011-IR(M)]

JOHAN TOPNO, Under Secy.

#### ANNEXURE

#### IN THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL- CUM-LABOUR COURT, GUWAHATI

**Present:** Shri L.C. Dey, M.A., LL.B.,  
Presiding Office,

CGIT-Cum-labour Court, Guwahati.

In the matter of an Industrial Dispute  
between:-

The Management of ONGC Limited,  
Kolkata.

-VS-

Their Workman Sri Manik Chandra Das,  
Tripura (West).

**Ref. Case No. 24 of 2013**

Copy of order dated 23.03.2015

#### ORDER

23.03.2015

The case Record put up today along with the order No. F.No.L-30012/45/2011-IR(M) dated 13.1.2015 from the Ministry of Labour and Employment along with a copy of the judgement and order (oral) passed by the Hon'ble Gauhati High Court on 18.11.2014 in (1) W.P.(C) No. 5958 of 2013 (2) W.P.(C) No. 7372 of 2013 (3) W.P.(C) No 7381 of 2013 (4) W.P.(C) No. 7385/2013 by which the Hon'ble Gauhati High Court has been pleased to dispose of the instant reference case and 45 nos. of other reference case in the matter of an Industrial Dispute between the Management of ONGC Ltd. Kolkata (O.P./management) and the workman Sri Manik Chandra Das, Tripura (west) (Claimant/workman).

This dispute arose between the employer in relation to the management of ONGC Ltd. and their workmen and the said dispute was referred to by the Ministry for adjudication *vide* their No. F.No. L-30012/46/2011-IR(M), dated 26.06.13. The schedule of this reference is an under:

"Whether the action of the management of ONGC Ltd., in the terminating the services of workman Shri Manik Ch. Das. S/o Sh Monoranjan Das, Ex.



Contingent workman engaged in seismic survey work through their Geophysical Party *w.e.f.* 01.07.2001 in presence of settlement dated 27/28.01.2001, is legal and justified? What relief the concerned workman is entitled to?

The case of the claimant/workman, as it appears from the claim statement, in brief, is that he had been working as casual contingent workman under ONGC, Tripura since 1982-83 to work in the seismic survey section under geophysical Party No. 27 along with other workmen. But the management did not consider their genuine case for appointment on regular basis despite his long 20 years of unblemished, dedicated service rendered to the Management. The Hon'ble Gauhati High Court passed an order and judgment and decided the said issue in terms of Memorandum of settlement dt. 27/28.01.2001 executed by & between the Management & their workmen signed before the R.L.C. (C), Guwahati. Despite the above order of the Hon'ble High Court the management did not regularize the workmen rather the present workman has been retrenched from service in July, 2001 without assigned any reason thereof, and the management in order to avoid the statutory obligation as provided u/s 25(F) of the I.D. Act 1947 allowed the workmen to work 236 days in each calendar year with few intentional breaks, and thereby the management deliberately exercised unfair labour practice. In fact, the workman worked for more than 240 days on an average in every year. Thus the management have not complied with the terms of the said settlement. Hence, the workman prayed to adjudicate the present reference by pronouncing an award in favour of the claimant/workman.

On receipt of the order of reference from the Ministry this reference case was registered and notices were issued upon both the parties who appeared before this Tribunal. The workman submitted his claim statement along with the supporting documents. During pendency of this proceeding the management after obtaining time on few dates submitted a petition on 15.01.2014 stating that they have moved before the Hon'ble Guwalati High Court assailing, inter-alia, the order or reference and the subsequent notice issue there upon and the Hon'ble High Court passed on interim order dated 18.12.2013 staying the further proceeding of the reference. The management also submitted a copy of the order dated 18.12.2013 passed by the Hon'ble Gauhati High Court in W.P. (C) No. 7372/13. Accordingly the proceeding of this reference was stayed with effect from 15.01.2014 until further order.

On perusal of the letter dated 13.1.15 issued by the Ministry of Labour and Employment along with the copy of the judgment and order (oral) passed by the Hon'ble High Court in Writ Petition No. W.P. (C) No. 7372/13 dated 18.11.14, it appears that the Hon'ble Gauhati High Court has been allow the Writ Petitions preferred by the management of ONGC challenging the claims of the

workmen as well as the order of reference and the subsequent notices issued thereupon by this Tribunal, on the ground that since the memorandum of settlement arrived at u/s 12(3) of the I.d. Act, 1947 in conciliation proceeding before the Regional Labour Commission (C) on 27th/28th January, 2001 and the same having been acted upon by all the concerned parties, there could not have been any occasion for the workmen involved in the writ petitions to raise a further dispute already stood settled as per the said settlement, and consequently no reference could have been made for adjudication for the issue raised; and set aside and quashed the reference under challenge with observation that consequently, the proceeding culminating from the said reference and pending before the Tribunal-cum-Labour Court shall also stand set aside and quashed.

In view of the above circumstances this reference is disposed of granting no relief to the workman.

L.C. DEY, Presiding Officer

नई दिल्ली, 16 अप्रैल, 2015

**का.आ. 819.**—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ओरिएण्टल इन्शुरन्स कंपनी लिमिटेड के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 41/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 06/04/2015 को प्राप्त हुआ था।

[सं. एल-17011/07/2013-आईआर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 16th April, 2015

**S.O. 819.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947)] the Central Government hereby publishes the award (Ref. I.D. No. 41/2014) of the Central Government Industrial Tribunal/Labour Court, Chennai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Oriental Insurance Company Limited and their workmen, which was received by the Central Government on 06/04/2015.

[No. L-17011/07/2013-IR (M)]  
JOHAN TOPNO, Under Secy.

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT  
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,  
CHENNAI**

Friday, the 20th March, 2015

**Present:** K. P. PRASANNA KUMARI,  
Presiding Officer

**Industrial dispute No. 41/2014**

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of the Oriental Insurance Co. Ltd. and their workman)

**BETWEEN**

The General Secretary : 1st Part/Petitioner Union  
All India General  
Insurance Employees  
Congress, 4 Esplanade,  
4th Floor  
Chennai-600108

**AND**

The Deputy General : 2nd Party Respondent  
Manager  
The Oriental Insurance Company Ltd.  
UIL Building IV Floor, 4 Esplanade  
Chennai-600108

**Appearance**

For the 1st Party/Petitioner : In Person

For the 2nd Party/Respondent: Sri T.S. Ramasubramaniam,  
Sri, T.K. Lavanya  
Murthy, Sri Nidhin  
Sreenivasan, Authorized  
Representatives

**AWARD**

The Central Government, Ministry of Labour and Employment vide its Order No. L-17011/07/2013-IR (M) dated 31.03.2014 dated referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

"Whether the refusal of the Management of Oriental Insurance Co. Ltd. To pay additional remuneration to Sri R. Sevugamoorthy, Caretaker in the form of annual increment and resultant arrears w.e.f. 01.01.2006 is legal and justified? If not, to what relief the workman is entitled to?"

2. On receipt of Industrial Dispute this Tribunal has numbered it as ID 41/2014 and issued notices to both sides. The petitioner has appeared in person and the Respondent through Authorized Representatives and filed Claim and Counter Statement respectively. The petitioner has filed rejoinder and the Respondent replied to the rejoinder also.

3. The averments in the Claim Statement filed by the petitioner in brief are these:

The petitioner, a Registered Trade Union has raised the dispute on behalf of Sevugamoorthy, its member. Sevugamoorthy was appointed by the Respondent as Caretaker on 08.03.1985. His Basic Pay was fixed at the

scale of Sub-Staff and he was paid DA, HRA and CCA. He was granted annual increments every year as applicable to those in Sub-Staff cadre. Sevugamoorthy has completed 29 years of service. Though increments were granted for the years 2003, 2004 and 2005, subsequent increments were deliberately denied by the Respondent. Refusal to grant increment from 01.01.2006 and converting the Basic Pay and other allowances to consolidated salary is a change of service condition in violation of Section-9A of the Industrial Disputes Act, in the absence of any notice. The Respondent is bound to revise and re-fix the Basic Pay of Sevugamoorthy and pay arrears also. An order may be passed holding that Sevugamoorthy is entitled to annual increments from 01.01.2006 and also directing the Respondent to pay arrears of salary as per the notification of the Government.

4. The Respondent has filed Counter Statement contending as follows:

Sevugamoorthy is not a workman within the meaning of Section-2(a) of the Industrial Disputes Act. There is no provision for the Respondent to recruit Caretaker.

The Respondent is bound to comply with the instructions of GIPSA regarding the terms of contract, charges etc. for the Guest House. Sevugamoorthy is only an independent Contractor and not an employee of the Respondent. So he is not coming under the purview of General Insurance (Conduct, Discipline and Appeal), Rules 1975. Hon'ble Madras High Court has found in Writ Petition No. 3638/2001 that Sevugamoorthy is not a workman of the Respondent. One Ranade was earlier the Caretaker of the Guest House of the Respondent at Chennai on contract basis. Sevugamoorthy used to assist Ranade. When Ranade left the place, Sevugamoorthy applied for the post and he had entered into an agreement of contract with the Respondent on 24.08.1987 for discharging the functions of the Caretaker on contractual basis. Payment as per the contract used to be revised from time to time on the basis of policy decision taken by GIPSA. As a Contractor, Sevugamoorthy is not eligible for any pay revision or increment as claimed by him. The decision of the High Court of Madras in Writ Petition No. 3638 of 2001 has become final. The petitioner is not entitled to any relief.

5. The petitioner has filed rejoinder and the Respondent has filed reply to the rejoinder reiterating their respective contentions.

6. The evidence in the case consists of oral evidence of WW1 and MW1 and documents marked as Ext. W1 to Ext. W11 and Ext. M1 to Ext. M11.

7. The points for consideration are:

- (i) Whether Sevugamoorthy is entitled to any amount as annual increment and resultant arrears?
- (ii) What is the relief to which he is entitled?

### The Points

8. The dispute is raised by the petitioner union on behalf of Sevugamoorthy who is acting as the Caretaker of the Respondent at its Guest House in Chennai. According to the petitioner, Sevugamoorthy was employed with the Respondent and his pay was fixed at the scale of that of sub-staff working under the Respondent establishment. It is alleged by the petitioner that Sevugamoorthy was not given annual increment from 01.01.2006 though increment used to be given prior to that. The claim of the petitioner is to allow annual increments to Sevugamoorthy and direct the Respondent to pay the arrears of increment.

9. The Respondent meets the case of the petitioner with a contention that Sevugamoorthy is not a workman at all, he having been never employed by the Respondent directly. According to the Respondent, Sevugamoorthy was engaged on contract basis to work as Caretaker at the Guest House.

10. Ex. W1 is the order of the Respondent by which Sevugamoorthy is engaged as Caretaker. One of the terms of engagement is that the service as Caretaker is purely on contractual basis. A monthly amount is fixed as remuneration to Sevugamoorthy. A reading of the terms of Ext. W1 itself would reveal that the engagement was on contractual basis.

11. More probe in the matter is not required in view of the order of the Hon'ble High Court of Madras in a Writ Petition filed challenging the award of this Court and has become final. Ex. M2 is the order of the High Court of Madras in WP 3638/2001. This Writ Petition was filed by the Respondent Company challenging the award in ID 32/1995 of this Court. Though the petitioner has taken pains to produce the copy of the award in another ID before this Tribunal in which a similar claim was allowed, the award in ID 32/1995 which pertains to Sevugamoorthy itself is not seen produced by the petitioner. As could be made out from Ex. M2 order Sevugamoorthy has claimed regularization in service on the basis that he is only a Caretaker and there was no contract of employment between him and the Management. My predecessor has found in ID 32/1995 that Sevugamoorthy is directly employed by the Respondent and that he is entitled to regularization. The Hon'ble High Court has set aside the award of this Tribunal on the finding that Sevugamoorthy was appointed purely on contractual basis, that there was an agreement between him and the Management and it was in pursuance of this agreement he was allowed to perform his duties and he has been receiving remuneration

as fees during the period of contract. This finding of the Hon'ble High Court given on 03.02.2007 has become final. So, against this finding the petitioner cannot claim on behalf of Sevugamoorthy that he was directly employed by the Respondent, that he comes under the definition of workman and was being paid salary like other employees of the respondent. The status of Sevugamoorthy being that of a contractor, he is not entitled to annual increments as claimed by him. The remedy for him is to get his remuneration revised and re-fixed in accordance with the rise in cost of living and other circumstances. I find that Sevugamoorthy is not entitled to any relief through this dispute.

In view of my discussion above, the reference is answered against the petitioner. An award is passed accordingly.

K.P. PRASANNA KUMARI, Presiding Officer

### Witnesses Examined:

For the 1st Party/Petitioner Union : WW1, Sri T.P.  
Kannan

For the 2nd Party/Management : MW1, Sri K.  
Varadarajan

### Documents Marked:

#### On the petitioner's side

Ex.No.	Date	Description
Ex.W1	08.03.1995	Appointment order issued to Caretaker by Respondent
Ex.W2	24.10.1997	General Insurance Corporation of India letter on Increments
Ex.W3	31.10.1997	Respondent HO Circular
Ex.W4	07.06.2010	Respondent Company arrears paid Statement including increments
Ex.W5	23.02.2010	Petitioner letter to Respondent Company
Ex.W6	07.07.2011	Petitioner letter to Respondent Company
Ex.W7	21.12.2005	Government of India Scheme 2005
Ex.W8	08.10.2010	Government of India Scheme 2010
Ex.W9	06.06.2011	Hon'ble High Court of AP Hyderabad Order on payment of increments.
Ex.W10	24.11.2011	This Industrial Tribunal Award in ID No. 38/2011
Ex.W11	19.11.2009	The deposition of witness by Govindarajan United India Insurance Co. Ltd.

**On the Management's side**

Ex. No.	Date	Description
Ex.M1	08.03.1985	Letter from the Respondent to R. Sevugamoorthy for the Service as a Caretaker on payment of Rs. 425/- per month towards service.
Ex.M2	03.02.2007	Judgment in WP No. 3638/2001 passed by the Hon'ble High Court, Madras confirmed that R. Sevugamoorthy only on contractual basis
Ex.M3	06.05.2010	Letter from Sevugamoorthy to the Respondent indicating he is a Caretaker on contract basis at Koyambedu
Ex.M4	03.12.1984	Request of Mr. R. Sevugamoorthy for the post of Caretaker
Ex.M5	11.06.2010	Order in ID No. 74/2007
Ex.M6	18.09.2006	Letter from Mr. Sevugamoorthy
Ex.M7	31.07.1997	Circular No. Pers./A/HO/276(P)/33/97/CR-4521
Ex.M8	31.10.2000	Judgment in ID No. 32/1995
Ex.M9	01.07.2010	Payment Voucher No. 5001000874
Ex.M10	18.05.2012	Circular No. HO/Estb./2012/CR-6706
Ex.M11	28.03.2014	Circular No. HO/Estb./2014 CR-6893

नई दिल्ली, 16 अप्रैल, 2015

**का.आ. 820.**—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इंडियन आयल कॉरपोरेशन लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में विनिर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय 1, दिल्ली के पंचाट (संदर्भ संख्या 36/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 6/4/2015 को प्राप्त हुआ था।

[सं एल-30012/75/2012-आई आर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 16th April, 2015

**S.O. 820.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. I.D.No. 36/2013) of the Central Government Industrial Tribunal/Labour Court 1, Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of India Oil Corporation Limited and their workman, which was received by the Central Government on 6/4/2015.

[No. L-30012/75/2012-IR(M)]  
JOHAN TOPNO, Under Secy.

**ANNEXURE**

**IN THE COURT OF SHRI AVTAR CHAND DOGRA,  
PRESIDING OFFICER, CENTRAL GOVERNMENT  
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT  
NO. 1, KARKARDOOMA COURT COMPLEX, DELHI**

**ID No. 36/2013**

Shri Ajmer Singh,  
S/o Shri Chotte Lal,  
R/o Village and Post Office Karorr,  
Distt. Rohtak, HARYANA

...Workman

**Versus**

1. The Manager,  
Indian Oil Corporation Ltd.  
Indane Gas Terminal  
Tikri Kalan Plant, Ghevera More,  
Delhi - 110 041

2. M/s. Beehive Security & Surveillance,  
House No. 43, Rathi Enclave,  
New Roshan Vihar,  
Kakraola More, Najafgarh,  
Delhi - 110 043

...Management

**AWARD**

Central Government, *vide* letter No. L-30012/75/2012-IR(M) dated 06.02.2013, referred the following industrial dispute to this Tribunal for adjudication:

"Whether the action of the management of M/s. Beehive Security & Surveillance in terminating the services of Shri Ajmer Singh, S/o Shri Chotte Lal from IOC Depot, Tikri Kalan, Delhi with effect from 30.09.2011, is legal and justified? What relief the workman is entitled to?

2. On receipt of the above reference, notice was sent to the workman as well as the management. None appeared on behalf of the claimant. As such, this Tribunal ordered issuance of fresh notice to the workman. Despite sending notice by registered A.D., neither the workman nor any authorized representative on his behalf appeared before the Tribunal so as to pursue his case. Thus, it is clear that the workman is not interested in adjudication of reference on merits.

3. Since the workman has neither put in his appearance nor has he led any evidence so as to prove his cause against the management, as such, this Tribunal is left with no choice, except to pass a 'No Dispute/Claim' award. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

A.C. DOGRA, Presiding Officer

Dated March 23, 2015



नई दिल्ली, 17 अप्रैल, 2015

**का.आ. 821.**—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार दी यू टी आई असेट मेनेजमेन्ट क. प्राईवेट लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय 1, नई दिल्ली के पंचाट (41/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 6/4/2015 को प्राप्त हुआ था।

[सं एल-12025/13/91-आई आर (बी-II)]  
रवि कुमार, डेस्क अधिकारी

New Delhi, the 17th April, 2015

**S.O. 821.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 41/2011) of the Cent.Govt.Indus.Tribunal-cum-Labour Court New Delhi as shown in the Annexure in the Industrial Dispute between the management of The UTI Asset Management Co. Pvt. Ltd. and their workmen, received by the Central Government on 16/4/2015.

[No. L-12025/13/91-IR(B-II)]  
RAVI KUMAR, Desk Officer

#### ANNEXURE

**IN THE COURT OF SHRI AVTAR CHAND DOGRA,  
PRESIDING OFFICER, CENTRAL GOVERNMENT  
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT  
NO. 1, KARKARDOOMA COURT COMPLEX, DELHI**

**ID No. 41/2011**

Shri J.C. Katyal,  
A-113A, Joshi Colony,  
Mandawali,  
Delhi 110 092

....Workman

*Versus*

The UTI Asset Management Co. Pvt. Ltd.  
Gulab Bhawan (Rear Block) 2nd Floor,  
6, Bahadurshah Zafar Marg,  
New Delhi 110 002

...Management

#### AWARD

Briefly, the instant reference was received by this Tribunal from the appropriate Government with the following terms:

"Whether action of the management of Unit Trust of India in dismissing Shri J.C. Katyal with effect from 17.12.1987 is justified? If not, what relief the workman is entitled?"

2. It transpires from the record that the claimant filed statement of claim wherein is averred that he was earlier employed as clerk in Canara Bank and thereafter, on 27.09.1977 he joined services of the present employer (UTI) in its Delhi office as Clerk/Cashier and in due course of time he was made permanent and re-designated as Assistant. It is clear that after some time, the claimant became instrument in formation of UTI Employees Association, New Dehi and All India Unit Trust Employees Association, registered trade union in 1978. Prior to this, there was no trade union functioning with the respondent management, Claimant was holding the post of Secretary of AIUTEA till the date of his dismissal from service.

3. According to the claimant, Shri A.S. Dalawari always harboured ill will towards him and made efforts to involve him in disciplinary cases. The claimant was posted by him in Floating Section from Accounts Section *vide* order dated 04.08.1993. In 1983, on taking charge of Regional Office, Shri Dalawari styled himself as Officer Incharge and issued various memos to the claimant. Legitimate union activities of the claimant were always with resentment by the respondent management. As a matter of fact, a number of employers had become members of the trade union one capacity or the other and were harassed in one form or the other, as a result of which some employees were forced to leave the services of UTI. Thus, the management has been harassing the claimant in innumerable ways. Management was always looking for an opportunity to get rid of workmen. Since Shri A.S. Dalawari was officer of Grade C rank, as such he was not competent to take disciplinary action against the claimant as per directions issued by the Executive Committee of Board of Directors (a statutory body in the UTI).

4. *Vide* office order No. 18/83-84 dated 04.08.1983, Shri Dalawari in his official capacity of Manager in Delhi office issued posting orders of the claimant from the accounts section to floating section. It is clarified at this stage that the staff posted in the floating section do not have any assigned place of work or job but are assigned on a day to day basis the section in which they will perform work, i.e. it was sort of 'reserves' section. The day to day assignment of place of work was done at the relevant time by one Mr. Narayanan, Deputy Manager: Staff. Thus, the claimant was also from time to time deputed to work by the said Mr. Narayanan in the various sections of the Delhi office of the respondent like records section, repurchase section, accounts section, sales promotion section, dividends section etc. and the claimant carried out such assignment given to him.

5. As a measure of retaliation Mr. A.S. Dalawari from the end of June 1984 onwards, without the authority of law and competence, commenced issuing to the claimant series of communications falsely and *malafide* alleging that the claimant on various days between 27.06.1984 to 17.07.1984

has not been reporting to his section (without specifying the name of the section itself) and had after marking his attendance had been leaving the office premises. The claimant in response to various communications consistently denied these unwarranted allegations.

6. From 18.07.1984 onwards the claimant herein ran into serious personal problems by way of the illness of his child and sent a leave application dated 18.07.1984 (seeking leave from 18.07.1984 to 28.07.1984) and another leave application dated 27.07.1984 extending the leave till 03.08.1984. However both these leave applications were summarily for malafide reasons rejected by the said Shri A.S. Dalawari or on his orders by his subordinates, though none of them were competent to do so. In this regard, Shri A.S. Dalawari purportedly issued two sets of communications i.e. one dated 21.07.1984 and the other dated 31.07.1984 intimating that the leave sought by the claimant cannot be sanctioned and that the claimant in his own interest is advised to attend office. The claimant however could rejoin duty only on 5.08.1984 or so.

7. Thereafter the claimant himself fell ill and as such sent a leave application by post on 13.08.1984 seeking leave till 18.08.1984 (Saturday) on the grounds of his own illness. However, even before this could reach the office, the said Mr. A.S. Dalawari caused to issue certain communications to the claimant dated 14.08.1984 dubbing the claimant's absence from 13.08.1984 as being unauthorized and that the claimant in his own interest should join duty. Once again, in response to the above said leave dated 18.08.1984 (Saturday) it was conveyed that the leave applied for was not being considered since the same was not accompanied by a medical certificate and that the claimant should submit a medical certificate from the medical superintendent of a Government Hospital, New Delhi

8. Even before those communication reached him, the claimant joined duty on 20.08.1984 (Monday) performed duties for that day and 21.08.1984. Unfortunately, on the next day i.e. 22.08.1984 due to heavy rains there arose a situation for the claimant to carry out urgently repairs to his house and on this ground sent a leave application seeking leave from 22.08.1984. Without making any reference to this leave application, management issued certain communications to the claimant declaring the claimant to be unauthorizedly absent and that the claimant in his own interest should report for duty.

9. The claimant has also filed reply to the various memos issued by the management at the instance of Shri A.S. Dalawari as is clear from letters dated 02.07.1984, 07.07.1984, 11.07.1984, 14.07.1984 as well as 04.08.1984 and the same was not found to be satisfactory by the management. Accordingly, it was decided by the management to conduct departmental enquiry against the claimant.

10. Charge sheet dated 27.08.1984 was served upon the claimant, alleging as under:

"(a) You marked your attendance by initialling in the Attendance Register on the following dates and thereafter did not report to the Records Section to which you were posted. You left the office premises unauthorizedly after initialling the muster and did not attend to any work at any time during the course of the day on the dates mentioned below:

27.06.1984,	28.06.1984,	29.06.1984,	30.6.1984,
02.07.1984,	03.07.1984,	04.07.1984,	05.07.1984,
06.07.1984,	09.07.1984,	10.07.1984,	11.07.1984
12.07.1984,	16.07.1984,	17.07.1984	

(b) Your application for ordinary leave from 18th July, 1984 to 28th July, 1984 and extension upto 3rd August, 1984 we not accepted and you were advised to report for duty forthwith vide telegrams and also letter No. UT.ND 919/M.67/84-85 dated 21st July, 1984 and No. U.T.ND. 1466/M.67/84-85 dated 31st July, 1984 respectively. In spite of the above advices, you did not report for duty till 4th August, 1984, having thus remained unauthorizedly from 13th to 18th August, 1984 and 22nd August, 1984 till date.

The circumstances set out hereinabove, if proved, would amount to following acts of misconduct attracting appropriate penalty including your dismissal from service of the Trust:

(1) Unauthorizedly remaining absent from the place of work in breach of Rule 26 of Unit Trust of India (Staff) Rules, 1978.

(2) Disobeying the lawful and reasonable orders of the management to report for duty and discharge your duty in breach of Rule 27 of the Unit Trust of India (Staff) Rules 1978.

(3) Committing act/acts subversive of discipline, in breach of Rule 27 of Unit Trust of India (Staff) Rules, 1978.

(4) Committing an act prejudicial to the interest of the Trust in breach of Rule 29 of the Unit Trust of India (Staff) Rules, 1978.

(5) Committing act/acts unbecoming of an employee of the Trust, which is prejudicial to the interest of the Trust, in breach of Rule 29 of Unit Trust of India (Staff) Rules 1978.

It has been decided to appoint Shri P.C. Gupta Deputy Manager as an Enquiry Officer to hold the enquiry. The Enquiry Officer will advise you the venue, date and time of the enquiry. At the aforesaid enquiry, you will be permitted to lead evidence, documentary and oral, in support of your contentions and you will be permitted to cross examine the witness/witnesses, if any, of the Trust.

In case you do not appear for the enquiry at the given venue, date and time, the enquiry would be held and concluded ex-parte."

11. Charge sheet dated 08.09.1984 was also served, alleging as under:

"Explanation offered by you through your letter (in Hindi) dated 01.09.1984 for your unauthorized absence from 13th August, 1984 to 18th August, 1984 is not found to be satisfactory. By this letter you have also cast aspersions on the Trust.

2. You have further disobeyed the orders issued to you by the Trust through its following communications:

- a. Telegram dated 14th August, 1984
- b. Letter No. No.UT.ND.765/M.67/84-85 dated 14th August, 1984 (by registered post)
- c. Letter No. UT.ND. 2378/M.67/84-85 dated 14th August, 1984 (under certificate of posting)
- d. Telegram dated the 18th August, 1984
- e. Letter No. UT.ND. 888/M.67/84-85 dated 18th August, 1984
- f. Letter No. UT.ND. 2728/M.67/84-85 dated 18th August, 1984 (under Certificate of Posting)
- all advising you to submit a medical certificate from Medical Superintendent of a Government Hospital, New Delhi in support of your illness during the period 13th August 1984 to 18th August, 1984 when you remained absent unauthorizedly.

You did not comply with the orders of the Trust contained in the various communications listed above and have thus committed an act of insubordination.

3. Your letter dated the 1st September, 1984, enclosing a copy of your undated application for leave for the period from 22nd August 1984 to 31st August 1984 casts aspersions on the management besides being couched in impolite language, viz. ...."purposefully not acknowledging the receipt of my application...."

4. You have further been absenting unauthorizedly from 3rd September 1984 in spite of the following communications, viz.,

- a. Telegram dated 5th September, 1984
- b. Letter No. UT.ND. 1484/M.67/84-85 dated 5th September, August, 1984 (by registered post)
- c. Letter No. UT.ND. 1484/M.67/84-85 dated 5th September, 1984 (under certificate of posting)

You have thus again committed an act of insubordination of the orders issued to you.

5. The circumstances set out hereinabove, if proved, would amount to following acts of misconduct attracting appropriate penalty including your dismissal from the service of the Trust:

(i) Not conforming, abiding, observing and obeying he orders and directions issued by the office and thus showing insubordination in breach of Rule 27 misprinted as (37) of Chapter IV of the Unit Trust of India (Staff) Rules, 1978 (hereinafter called the rules).

(ii) Unauthorized absence from duty without having obtained the permission of the Comptent Authority in beach of Rule 39(1) and (2) of the siad Rules.

(iii) Casting aspersions on the Management and not couching your letters in polite language which are acts subversive of the discipline and prejudicial to the interest of Trust in breach of Rule 29 of the said Rules.

6. It has been decided to appoint Shri P.C. Gupta, Deputy Manager as an Enquiry Officer to hold the enquiry. The Enquiry Officer will advise you the venue, date and time of the enquiry. At the aforesaid enquiry, you will be permitted to lead evidence, documentary and oral, in support of your contentions and you will be permitted to cross examine the witness/witnesses, if any, of the Trust.

7. In case you do not appear for the enquiry at the given venue, date and time, the enquiry would be hald and concluded ex--parte."

12. Shri P. C. Gupta after conducting detailed enquiry by taking into consideration statement of witnesses as well as documents adduced by both the parties, submitted his report to the Competent Authority, holding the charges leveled against the claimant stand proved.

13. Thereafter, an opportunity was given to the claimant regarding quantum of punishment to be imposed upon him by Shri S. K. Vasu, Deputy General Manager, in terms of Staff Rules 55 (1E) of the UTI Staff Rules, 1978 as to why the claimant be not dismissed forthwith from service. Resultantly, claimant was dismissed from service vide order dated 17.12.1987.

14. It was against this background that reference was received by this Tribunal with the terms of reference as given in para 1 above.

15. After filing statement of claim as well as written statement and other documents, vide order dated 12.10.1993, following issues were framed:

- (i) Whether the domestic enquiry conducted against the workman is fair and proper?
- (ii) As in terms of reference.

Issue No. 1 was treated as preliminary issue. Workman in support of his claim examined himself and Shri Jagdish Chand Naiwal, UDC in Sales Tax Office. Shri P. C. Gupta, General Manager and Shri R. Subramaniam unfolded facts on behalf of the management.

16. It is clear from the records that evidence was adduced by both the parties in respect of charge sheet dated 27.08.1984 as well as charge sheet dated 08.09.1984.

17. It is further clear from evidence of both the parties that the main allegations against the claimant in the first charge sheet was of unauthorized absence from duties and letters casting aspersions on the management etc. In the second charge sheet, it was regarding insubordination.

Finally, my predecessor, Shri R. N. Rai, after considering evidence of both the parties on the preliminary issue, *vide* his order dated 28.04.2005 held as under:

"From the above discussions, it becomes quite obvious that the workman applicant was absent without sanctioned leave. No speaking order has been passed. It has not been shown that the absence of the claimant has caused severe loss to the management. The claimant was constrained to send casual leave application and medical certificates. He was not absent deliberately as it is quite vivid from the record. For sheer absence in good faith and for cogent reasons punishment of dismissal cannot be awarded it is too harsh and shockingly disproportionate to the misconduct of the claimant. The management should have treated him on leave without pay but he should not have been dismissed from service for his act of absence. Leave should have been granted to the claimant according to his exigencies but it appears that the management made it an excuse to dismiss the claimant from service as he was indulging in trade union activities.

18. In the facts and circumstances of the case, stoppage of two increments with cumulative effect is sufficient punishment to the act of absence. The claimant applicant is entitled to get full back wages as punishment imposed on him is quite disproportionate to his misconduct and is too harsh."

19. Thus it is clear that the action of the management is dismissing the claimant, Sir J. Ch Katyal from service with effect from 17.12.1987 was held to be illegal and not justified as the same was disproportionate to the misconduct, of which the claimant was held guilty.

20. Feeling aggrieved, a writ petition bearing No. 10966 of 2005 titled as UI Asset Management Co. Pvt. Ltd Vs the Presiding officer and another and another writ petition bearing No. 20371/2005 titled JC Katyal vs. UTI Asset Management Co. Pvt. Ltd. were filed and the same were disposed of by a common judgement dated 3.03.2008 wherein award dated 28.04.2005 passed by my learned predecessor was set aside and matter was remanded to Central Government Industrial Tribunal for fresh disposal for rehearing and re-determination of the disputes between the parties. Both parties were allowed an opportunity to lead evidence in respect of employment, if any, of the claimant Shri J.C. Katyal.

21. After remand of the case to this Tribunal, both the parties were granted opportunities to lead evidence as directed by the Hon'ble High Court and both the parties adduced oral as well as documentary evidence.

22. After considering evidence on record, my learned predecessor, Dr. R.K. Yadav, vide order dated 26.08.2011 held that the enquiry conducted in the present case is not fair and proper in as much as principles of natural justice were not followed. Resultantly, enquiry proceedings were declared to be violative of fair play and issue relating to the vires of the enquiry was decided against the management. In view of the findings given above, again an opportunity was given to both the parties to lead evidence regarding charges contained in both the charge sheets.

23. The management in, in order to prove allegations in both the charge sheets examined Shri Raghubir Singh and Shri Ashok Kumar Dhingra as MW3 and MW4 respectively. Certain documents were also tendered in evidence. Claimant, Shri J.C. Katyal also led evidence to refute the charges by tendering his affidavit and examined himself.

24. I have heard Shri S. Balram, authorized representative on behalf of the claimant and Shri Ram Lal Roy, authorized representative on behalf of the management.

25. It is pertinent to mention here that the evidence, which was adduced by the parties before Shri P.C. Gupta, Enquiry Officer, including his report, against the claimant herein cannot be taken into consideration in as much as the enquiry report submitted by Shri P.C. Gupta stood vitiated and was set aside vide order dated 26.08.2011 of my learned predecessor, Dr. R.K. Yadav.

26. Now, the vital question which requires determination is whether allegations contained in charge sheets dated 27.08.1984 and 08.09.1984, discussed above, have been proved as required under the law against the claimant or not. Management examined Shri Raghubir Singh and Shri Ashok Kumar Dhingra, as MW3 and MW4 respectively and in my humble and considered opinion, evidence of these two witness is not of much value so far as charges contained in the charge sheet dated 27.08.1984 regarding leaving of the office premises during office hours unauthorizedly by the claimant is concerned. To my mind, evidence in this regard of those officials who were working in the same room/office with the claimant is of vital importance. There is no concrete evidence on record to suggest that claimant has left the office premises unauthorizedly after initialling attendance register or he did not perform any official work on the dates mentioned in the charge sheet. In this regard, it is appropriate to refer the statement of Shri Raghubir Singh, MW3, who simply deposed that he joined UTI in 1977 and in 1984 he was working as Assistant with the management. In July 1984, he was working in the Record Section and letter MW3/1 was written by him. There is nothing in the statement of



this witness that the claimant did not report to Record Section on the dates mentioned in the charge sheet dated 27.08.1994. It is clear that in the year 1984, this witness was Assistant in Records Section but he has not whispered even a word regarding leaving of office by the claimant in an unauthorized manner on 27.06.1984, 28.06.1984, 29.06.1984, 30.06.1984, 02.07.1984, 03.07.1984, 04.07.1984, 05.07.1984, 06.07.1984, 09.07.1984, 10.07.1984, 11.07.1984, 12.07.1984, 16.07.1984 and 17.07.1984. There is also nothing in the statement of this witness regarding allegations contained in the second charge sheet dated 08.09.1994 regarding unauthorized absence from 13.08.1984 to 18.08.1984. This witness has referred to Ex. MW3/1, which he has written at the instance of Shri K.G. Wasal, General Manager, who has not been examined by the management regarding the same. Shri Raghubir Singh, MW3 also feigned ignorance whether Shri Wasal, General Manager was alone in his cabin at the time of writing of the above letter or someone else was sitting there. Statement of this witness is vague and general in nature and does not inspire any confidence.

27. Shri Ashok Kumar Dhingra, MW4 joined the management in 1977. He was working in Record Section in July 1989. Statement of this witness is also silent as to whether the claimant left the office after marking attendance on the dates contained in the charge sheet. He has also not referred to any act of insubordination, indiscipline or any unbecoming behaviour of the claimant with his superiors or colleagues. Since as per statement of this witness, he was posted in Record Section in which the claimant was also posted at the relevant time. As such, statement of this witness regarding unauthorized absence of the claimant on any kind of misbehavior could have been very relevant if any of the witness was examined by the management so as to prove the allegations against the claimant, Shri J.C. Katyal. The witness has referred to Ex. MW4/1. It is clear from perusal of Ex. MW4/1 that this witness has written the letter at the instance of his superior officer, who has not at all been examined as a witness. Statement of the senior officer, at whose instance the letter was written, was very crucial so as to prove the charges against the claimant.

28. The claimant, Shri J.C. Katyal has examined himself in rebuttal as WW1 and tendered his affidavit as Ex. WW1/B, which is on the same lines as his earlier affidavit as well as statement of claim. There is nothing material in the statement of the claimant so as to help the case of the management in any manner.

29. Law is fairly settled that allegations contained in the charge sheet regarding misconduct etc. are required to be proved against the delinquent official by preponderance of probability. But evidence in this regard must be cogent and clear so as to arrive at a safe conclusion that the employee has really committed the misconduct. It is also appropriate to mention here that keeping in view the overall

performance of the claimant, he was given letter of appreciation *vide* letter Ex. WW1/6 by Shri P.C. Gupta, who was the Enquiry Officer.

30. It is also necessary to mention here that the claimant has moved an application for grant of leave from 18.07.1984 to 28.07.1984 and extending the same up to 03.08.1984. These applications were not accepted and the claimant was directed to join duties forthwith as is clear from telegram and letters dated 21.07.1984 and 31.07.1984 respectively. Therefore, it is not the case of pure absenteeism and so called absence of the claimant is also not very long. Evidence of Shri P.C. Gupta, Deputy Manager as well as Shri Dalawari and other officials of the management who conducted enquiry and dealt with the application for leave of the claimant was imperative so as to prove that the claimant has intentionally not joined duty despite telegram being sent by the management. The letters dated 14.08.1984 and 18.08.2004 and other documents annexed with the charge sheet were required to be proved in accordance with law, though provisions of Evidence Act are not applicable strictly in departmental enquiries, yet basic principle underlying the Evidence Act regarding proving of documents cannot be ignored. Neither MW3 nor MW4 has made any reference to any of the material documents discussed above as well as mentioned in the charge sheets dated 27.08.1984 and 08.09.1984. As such, the same has dealt a crippling blow to the case of the management.

31. I have gone through the ratio of law in State of Haryana *vs.* Ratan Singh [1977(2) SCC 491] wherein it was observed that in the conduct of departmental enquiry, the authority is not bound by strict rules of Evidence Act but by fair play and natural justice.

32. Now, the next vital question which also requires determination by this Tribunal is whether the claimant was gainfully employed after the order of dismissal on 17.12.1997. Claimant in his affidavit Ex. WW1/B has clearly averred that he was not helping his wife in running the business of Vikas Auto. However, claimant has not clarified as to who were the persons running the business of Vikas Auto, which is being admittedly run from the house of the claimant. It is clear from the statement of the claimant, Shri Katyal (cross-examination dated 10.09.2013) that M/s Vikas Auto was being run from his residential address located at 11/3A, Joshi Colony, Mandawali, Delhi. He has stated that it was in the name of his wife and it was started in the year 1985. His wife was also an employee of NCT, Delhi during 1985. He has further stated that above workshop was operational in the year 2004. He further stated that he cannot produce any evidence to the effect that M/s Vikas Auto was not being run by him. Since the claimant has not mentioned names of the persons who were running business in the name of Vikas Auto, as such, it is legitimate to hold that the same was being run by the claimant and his family. There is

no other independent evidence led by the management so as to prove that the claimant was gainfully employed after dismissal from the job on 17.12.1987.

33. In *Deepali Gundu Surwase vs. Kranti Junior Adyapak Mahavidyalaya (D.Ed) and others* (2013 Lab.I.C. 4249), Hon'ble Apex Court dealt at length with question of grant of back wages to an employee/workman under various situations and particularly in the context of provisions of section 11(a) of the ID Act and held as under:

"Para 33 : Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments."

34. In the above case also ratio of the law in *J.K. Synthetics vs. K.P. Aggarwal* [AIR 2007 SC (Supp) 637 : 2007 AIR SCW 1357] in which reliance placed on behalf of the management was considered. In the said case, the employee was dismissed from service on the basis of enquiry conducted by the competent authority. Labour court held that the enquiry was not fair and proper and permitted the parties to adduce evidence on the charges levelled against the workman. After considering the evidence, the Labour Court gave benefit of doubt to the workman and substituted punishment of dismissal with stoppage of two increments for two years. Labour court also held that the employee was entitled to reinstatement with full back wages for the period of unemployment. Learned Single Judge dismissed the writ petition as well as Division Bench declined to interfere with the order of the Labour Court as the employer had wilfully violated the order of the Labour Court. Labour Court also amended the award, which was even upheld by the High Court, who did award full back wages. However, Hon'ble Apex Court in the case of *Deepali Gundu Surwase vs. Kranti Junior Adyapak Mahavidyalaya (D.Ed) and others* (Supra), Specifically held as under:

"The observations made in *J.K. Synthetics Ltd., vs. K.P. Aggarwal* (Supra) that on reinstatement the employee/workman cannot claim continuity of

service as of right is contrary to the ratio of the judgements of three Judge Benches referred to hereinabove and cannot be treated as good law. This part of the judgement is also against the very concept of reinstatement of an employee/workman."

35. The legal position regarding grant of back wages has been fully elaborated in the above case and it is clear that the Hon'ble Apex Court held that the cases in which the competent Court or Tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimizing the employee or workman, then the concerned Court or Tribunal will be fully justified in directing payment of full back wages. In such cases, the superior Courts should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc. merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employers obligation to pay the same. The Courts must keep in view that in the cases of wrongful/illegal termination of service, the wrongdoer is the employer and sufferer is the employee/workman and there is no justification to give premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/workman his dues in the form of full wages.

36. Having regard to the ratio of law discussed in the above authority, Tribunal is of the view that since the workman, after termination of his job, though was not gainfully employed in any firm or job, yet he was certainly helping in the business of his wife being run in the name and style of Vikas Auto. Business in the above firm was admittedly being run from the house of the claimant and wife of the claimant herein is admittedly working in Government of NCT Delhi. In such a situation, it is reasonable to hold that the workman was certainly helping his wife in running of the business of the firm. In view of this, the Tribunal is of the view that a cut of 25% in the back wages appears to be just and reasonable. There is no question of reinstatement in service of the claimant as he would have ordinarily superannuated by this time had been in the job.

37. As a sequel to my discussion and findings recorded herein above, it is held that the management has failed to prove the charges contained in charge sheet dated 27.08.1994 and 08.09.1994 against the workman. As such, dismissal of the workman was neither legal nor justified. It is also held that the workman is entitled to 75% back wages with consequential benefits from the date of dismissal till the date of his superannuation. An award is accordingly passed. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

A.C. DOGRA, Presiding Officer

Dated : February 13, 2015

नई दिल्ली, 17 अप्रैल, 2015

**का.आ. 822.**—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार नेशनल इंसुरेंस कंपनी लि. न्यास के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय कोलकता के पंचाट (संदर्भ सं. 02/1997) को प्रकाशित करती है जो केन्द्रीय सरकार को 16.04.2001 को प्राप्त हुआ था।

[सं. एल-17012/38/95-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 17th April, 2015

**S.O. 822.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref./02/1997) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Kolkata as shown in the Annexure, in the industrial dispute between the management of National Insurance Co. Ltd. and their workmen, received by the Central Government on 16/04/2015.

[No. L-17012/38/95-IR (B-II)]

RAVI KUMAR, Desk Officer

#### ANNEXURE

#### CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL

#### AT KOLKATA

#### Reference No. 02 of 1997

Parties: Employers in relation to the Management of National Insurance Co. Ltd.

AND

Their workmen

Present: Justice Dipak Saha Ray,

.....Presiding Officer

Appearance:

On behalf of the Management : Mr. Dipak Kumar Ghosh, Ld. Counsel

On behalf of the Workmen : Mr. Avijit Ghosh the concerned workman in person

State: West Bengal Industry: Insurance.

Dated 12th March, 2015

#### AWARD

By Order No. L-17012/38/95-IR(B-II) dated 09.01.1997 the Government of India, Ministry of Labour in exercise of its powers under Section 10(1)(d) and (2A) of the Industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication:

"whether the action of the management of National Insurance Co. Ltd. in terminating the services of Shri Avijit Ghosh, Ex-Pump Operator *w.e.f.* 20.08.92 is legal and justified? If not, to what relief the said workman is entitled?"

2. The case of the concerned workman is, in a nutshell, as follows:

The concerned workman and five (5) others were engaged by the management of National Insurance Company Ltd. for operating water lifting pump and other related job in the building situated at 5 and 7, Netaji Subhas Road, Kolkata. The said Company used to pay monthly salary to the said workmen including the concerned workman through one Pranab Kumar Dhar after obtaining signatures of the workmen on the salary payment register maintained by the Company through Pranab Kumar Dhar. The Company also maintained attendance register of these workmen through Pranab Kumar Dhar. It is contended by the concerned workman that there was in tender inviting quotation for engaging any contractor labour by the Company and that the Company never engaged Pranab Kumar Dhar as contractor under the provisions of the Contract Labour (Regulation and Abolition) Act. Actually the Company engaged Pranab Kumar Dhar as a middleman to recruit and appoint the workmen in order to avoid various provisions of law, rules and regulations of recruitment and also to avoid the relationship of employer and employee.

It is further contended by the workman that he along with others performed duties against permanent vacancies for about 2 years and as such their termination from service with effect from 19.8.1992 with complying with the mandatory provisions of the Industrial Disputes Act, is illegal. Accordingly, it is prayed that the concerned workman may be ordered to be reinstated with full back wages and future benefits.

3. As regards this the management/Company has opposed the claim of the workman by filing written statement contending *inter-alia* that the instant reference is not maintainable as there is no employer—employee relationship between the Company and the concerned person. It is the specific case of the Company that the Company never engaged the concerned person for operating water pumps and related jobs. The said person was the employee of M/s. Pranab Kumar Dhar who was engaged by the Company for operating the maintenance of the water pumps and accordingly M/s. Pranab Kumar Dhar engaged the concerned person and others for operating water lifting pumps and other related jobs. It is the further case of the Company that the concerned person was never appointed by the Company. Nor was he ever paid by the Company and there was no supervision and control of the Company over his work. The Company has accordingly prayed that the instant reference may be answered in the affirmative.



4. The concerned workman has examined three witnesses including himself and proved some documents namely, Attendance Register (Ext. W-01), Salary Register (Ext. W-02) and prayer for reinstatement (Ext.-W-03) in order to prove his case. On the other hand, the Company has examined one witness in support of its case.

5. The concerned workman in his evidence has corroborated the statements made his statement of claim. He has stated that Pranab Kr. Dhar used to work as a middleman of the Company and the Company appointed him (concerned workman) through Pranab Kr. Dhar. He has further stated that he used to sign attendance register (Ext. W-01) every day and used to get monthly pay signing the salary register (Ext. W-02).

6. This witness in his examination-in-chief has admitted that the said attendance register used to be maintained by Pranab Kr. Dhar and that he used to get his salary from Pranab Kr. Dhar. During cross-examination this witness has admitted that Company never issued him any appointment letter and that apart from Ext. W-01, Company did not maintain any separate attendance register.

7. WW-02, Shri Dilip Kumar Mukherjee in his cross-examination has admitted that Pranab Kr. Dhar who was engaged by the Company as machine repairer, engaged 6/7 workers for operating the pumps. His evidence goes to show that the Company had no licence for engaging contractor's labourers.

8. WW-03, Shri Arun Kumar Dutta in his examination-in-chief has stated that management engaged Pranab Kr. Dhar who engaged four/five persons including the concerned workman for operating water lifting pumps. His evidence-in-chief further goes to show that the Company used to pay wages to the said workmen through Pranab Kr. Dhar and that being an administrative officer of the Company he also used to supervise the work of those workmen. This witness during cross-examination has failed to produce any document to prove that he was an administrative officer of the Company in 1991-92 and was entrusted to supervise the work of pump operators. This witness has also failed to show any document to establish that the Company used to pay wages of the said workmen through Pranab Kr. Dhar.

9. The witness of the Company, MW-01 in his evidence has specifically stated that the concerned workman was never appointed by the Company and his work was never controlled and supervised by the Company. His cross-examination goes to show that witness Shri Arun Kumar Dutta (WW-03) used to look after the accounts and legal matters of the Company and that the work of Abhijit Ghosh was not supervised by the Company. According to him Exts. W-01 and W-02 were not maintained by the Company.

10. It is the case of the workman that M/s. Pranab Kr. Dhar is a contractor and that the Company recruited the concerned workman through the said contractor in order

to avoid the employer - employee relationship between the Company and workman. It is alleged that the Company has no registration to engage any contractor and that the said contractor had also no license to act as contractor. It is further alleged that said M/s. Pranab Kr. Dhar acted as middleman and the Company engaged the concerned workman and others through M/s. Pranab Kr. Dhar.

11. Admittedly, the concerned workman started working as operator of water pump machine under Pranab Kr. Dhar since 17.05.1991 and his work was terminated on 19.08.1992 when the contract of M/s. Pranab Kr. Dhar was cancelled. So, it cannot be said that the concerned workman performed his duties years together as water pump operator under several contractors. In such circumstances, the workman has to prove that he was actually appointed by the Company and that his work was being controlled and supervised by the Company.

12. In this case the concerned workman by examining himself and his witnesses has tried to establish that the Company appointed him as Operator of water lifting pump through one middleman, namely, M/s. Pranab Kr. Dhar and used to pay salary/wages to him through M/s. Pranab Kr. Dhar. He, in support of the said contention has proved Attendance Register (Ext. W-01) and Salary Register (Ext. W-02). But on careful perusal of the said documents it appears that the said two registers were maintained by M/s. Pranab Kr. Dhar. There is nothing in the said registers to show that the same were never seen or verified by the Company through its staff. On the other hand Exts. W-01 and W-02 go to show that the said registers were maintained by M/s. Pranab Kr. Dhar. The concerned workman has also failed to produce any paper to show during his service period as pump operator he ever made any correspondence with the Company in the matter of granting leave or in any matter relating to his job. The concerned workman has also failed to establish that there was permanent vacancy of Pump Operator and that his appointment was made after observing all formalities. On the other hand, the evidence of MW-01 goes to show that there was no permanent vacancy of the Pump Operator and that he was not appointed by the Company.

13. WW-03 by adducing evidence has tried to establish that he on behalf of the Company used to control and supervise the job of the workman. But, MW-01 in his evidence has specifically stated that the Company never supervised the job of the concerned workman and that WW-03 (Arun Kumar Dutta) used to look after accounts and legal matters of the Company. This witness has also specifically stated that the concerned workman, Abhijit Ghosh was never appointed as casual workman and that there was no scope or issuance of oral direction to Shri Ghosh by Administrative Officer. It is also denied by



this witness that Company used to pay Rs. 350/= p.m. to Shri Ghosh. This witness has not been cross-examined by the concerned workman. So, there is no scope or reason to disbelieve the said evidence of MW-01.

14. Now from the letter dated 16.12.1992 of M/s. Pranab Kr Dhar (Ext. M-02) it appears that Shri Dhar after cancellation of his contract wrote a letter to the Company to restore the contract or to engage his employees in the Company. This document again establishes that the concerned workman was engaged by M/s. Pranab Kr. Dhar and not the Company.

15. Considering the above discussion, I am of the view that the concerned workman has failed to establish that he was engaged by the Company as Water Pump Operator through M/s. Pranab Kr. Dhar in a camouflaged manner and that the Company used to pay his salary/wages and that the Company used to supervise his job. So, it appears that the concerned workman has failed to establish the relationship of employer — employee between the Company and the workman concerned.

16. Accordingly, the workman is not entitled to any relief what-so-ever.

Justice DIPAK SAHARAY, Presiding Officer

Dated, Kolkata,

The 12th March, 2015

नई दिल्ली, 17 अप्रैल, 2015

**का.आ. 823.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ महाराष्ट्र लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 155/01) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16/04/2001 को प्राप्त हुआ था।

[सं एल-12011/128/2001-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 17th April, 2015

**S.O. 823.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 155/01) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the management of Bank of Maharashtra and their workmen, received by the Central Government on 16.04.2015.

[No. L-12011/128/2001-IR(B-II)]

RAVI KUMAR, Desk Officer

## ANNEXURE

### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/155/01

The Secretary,  
Union of the Maharashtra Bank Employees,  
3/A, Ramanand Nagar,  
Lalghati, Bhopal

... Workman/Union

*Versus*

Regional Manager,  
Bank of Maharashtra,  
Regional Office, Admn Zone, 1/14  
Jail Road, Bhopal.

... Management

## AWARD

Passed on this 23rd day of January, 2015

1. As per letter dated 10-10-01 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D. Act, 1947 as per Notification No. L-12011/128/2001-IR(B-II). The dispute under reference relates to:

"Whether the action of the management of Bank of Maharashtra in imposing the penalty of stoppage of two increments with cumulative effect on Shri Ashutosh Awasthi, Clerk cum cashier, Dewadia Branch is justified? If not, what relief the workman is entitled to?"

2. After receiving reference, notices were issued to the parties. Ist party Union submitted statement of claim at Page 4/1 to 4/6. Union has submitted of claim on behalf of workman Ashutosh Awasthi. Union submits that IInd party has withhold two increments as per order dated 17-7-2000. It is further submitted that charge sheet was issued to CSE on 7-9-99. CSE was working as clerk-cum-cashier in the branch. The allegations in charge sheet issued to him were about deliberately disobeying order of the superiors, avoiding work allotted to him, committing act adversely affecting bank interest, remaining habitual unauthorized absent. Enquiry was conducted against workman giving opportunity for his defence. Principles of natural justice were violated. Enquiry Officer submitted his report dated 31-5-2000. Enquiry Officer found charge Nos. 1 and 4 proved against workman change Nos. 2, 3 were not proved against him. After considering report of Enquiry Officer, the punishment of withholding two increments of workman with cumulative effect was imposed. Workman challenged order of punishment filing appeal on 20-7-2000. Appellate Authority dismissed appeal on 7-12-2000.

3. Union submits that enquiry was not properly conducted. Workman had objected authority for issuing orders No. 1 to 3/98 to him, its reply was not given. During enquiry zerox copy of documents were not produced. Workman had reiterated that zerox copies of orders could not be proved without original. Said point was not decided by Enquiry Officer and the management was permitted to adduce evidence. The punishment of withholding increment is by way of victimization. It is illegal. On such grounds, Union has prayed for deciding reference in favour of Union. That CSE be allowed benefit of promotion and transfer which were denied to him.

4. IInd party management filed Written Statement at Page 5/1 to 5/5. Workman was working as clerk-cum-cashier. Chargesheet was issued to him, enquiry was conducted against him. IInd party submits that CSE was in habit of remaining absent from duty. Repeated warnings and notice were issued to him. There was no improvement in his behaviour. It is submitted that Enquiry Officer was appointed. Enquiry was conducted giving opportunity of defence to CSE. Original documents of orders issues ME 21 to ME 24 were missing. Original could not be produced. Enquiry Officer observed that the documents could be admitted by secondary evidence. All adverse contentions of Union that enquiry was not properly conducted. Principles of natural justice were not followed were denied. Considering the report of Enquiry Officer, punishment of withholding two increments was imposed on workman. IInd party prays that reference be answered in its favour.

5. After parties laid evidence, preliminary issue was decided by my predecessor. As per order dated 28-9-2012, enquiry was found proper and legal.

6. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

- |   |  |
|---|--|
| (i) Whether the charge No. 1 & 4 alleged against workman are proved from evidence in Enquiry Proceedings? | In Affirmative                         |
| (ii) Whether the punishment of withholding two increment on CSE is proper and legal?                      | In Affirmative                         |
| (iii) If so, to what relief the workman is entitled to?"  | Workman is not entitled to any relief. |

#### REASONS

7. As stated above, enquiry conducted against workman is found proper and legal. Therefore the evidence in enquiry needs to be considered for deciding whether Charge Nos. 1,

4 against workman are proved or not. Record of enquiry is produced. Charge sheet Exhibit M-2 issued to workman deals with disobedience of orders of his superiors and unauthorized habitual absence. Statements of management's witness Shri Vijay Kumar Joshi and MW-2 Dinesh Swaroop were recorded, both the witnesses of management were cross-examined at length. The evidence of the witnesses about habitual absence of workman beyond the leave period and disobeying order of his superior by CSE is supported in their evidence. As per Exhibit M-7, it was found that no leave was in account of CSE and he was shown unauthorized absence. As per Exhibit M-8, CSE was issued letter about the keys of cash safe were not returned. Document Exhibit M-8 covers with unauthorised absence of CSE, explanation called were not found satisfactory. Exhibit W-10 also deals with absence of CSE. There is sufficient evidence on record that CSE was habitual in unauthorized absence. The statements of management's witnesses Nos. 1 to 2 is sufficient to prove Charge Nos. 1 to 4 against workman. The evidence cannot re-appreciated as Appellate Authority when findings of Enquiry Officer are supported by some evidence. For above reasons, I record my finding in Point No. 1 in Affirmative.

8. Point No. 2 - the charges Nos. 1 & 4 were proved against workman as per report submitted by Enquiry Officer. The findings of Enquiry Officer are supported by some evidence. Considering proved charges relating to habitual absence, disobeying orders of superiors, the punishment of withholding of two increments imposed on CSE cannot be said excessive and illegal. For above reasons, I record my finding in Point No. 2 in Affirmative.

9. In the result, award is passed as under:—

- (1) The action of the management of Bank of Maharashtra in imposing the penalty of stoppage of two increments with cumulative effect on Shri Ashutosh Awasti, Clerk-cum-cashier, Devadia Branch is proper and legal.
- (2) Workman is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 17 अप्रैल, 2015

**का.आ. 824.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूनियन बैंक ऑफ इंडिया के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय धनबाद पंचाट (संदर्भ संख्या 57/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16.04.2015 को प्राप्त हुआ था।

[सं. एल-12011/64/06-आई आर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 17th April, 2015

**SCHEDULE**

**S.O. 824.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 57/2006) of the Central Government Industrial Tribunal-Cum-Labour Court, No.-2, Dhanbad as shown in the Annexure, in the industrial dispute between the management of Union Bank of India and their workmen, received by the Central Government on 16/04/2015.

[No. L-12011/64/06-IR(B-II)]

RAVI KUMAR, Desk Officer

**ANNEXURE****BEFORE THE CENTRAL GOVERNMENT  
INDUSTRIAL TRIBUNAL (NO. 2), AT DHANBAD****PRESENT**

Shri Kishori Ram,  
Presiding Officer

In the matter of an Industrial Dispute under  
Section 10(1)(d) of the I.D. Act, 1947.

**Reference No. 57 of 2006**

**Parties:** The General Secretary,  
Union Bank Employees' Association, C/o  
Union Bank of India,  
Kutchury Road, Ranchi,

Vs.

Asst. General Manager,  
Union Bank of India, Regional Office, Kali Babu  
Street, Ranchi  
Ministry's Order No L-12011/64/06-IR-(B-II)  
dated 07.08.2006

**APPEARANCES:**

On behalf of the workman/Union : Mr. D. Mukharjee,  
Ld. Adv.

On behalf of the Management : Mr. D.K. Verma,  
Ld. Adv.

State : Jharkhand

Industry : Banking

Dated, Dhanbad, the 15th Dec., 2014

**AWARD**

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec. 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication *vide* their Order No. L-12011/64/06-IR(B-II) dated 07.08.2006.

"Whether the action of the Management of Union Bank of India in inflicting the punishment of stoppage of two increments with cumulative effects against Shri Nagendra Sharma, Armed Guard posted in the Bank is legal, fair and justified? If not what relief the workman is entitled to and from which date?"

2. Mr. D. Mukherjee, Ld. Advocate for the Union/workman and Mr. D.K. Verma, the Ld. Advocate for the OP/Management are present. No Management witness at preliminary point has been produced. Meanwhile Mr. D. Mukherjee by filing a petition on behalf of the workman Negandra Sharma after serving a copy of it on the Ld. Advocate for the OP/Management has submitted that in view of the present relation of the workman with the Management, the workman is not interested in contesting the case, so an order to that effect may be passed.

In view the aforesaid circumstance as restored between both the parties, there is no longer an industrial Dispute existent. Hence, the case is closed; and accordingly it is passed an order of 'No Dispute Award'.

KISHORI RAM, Presiding Officer

नई दिल्ली, 17 अप्रैल, 2015

**का.आ. 825.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय धनबाद के पंचाट (संदर्भ संख्या 161/2001) को प्रकाशित करती है जो केन्द्रीय सरकार को 16.04.2015 को प्राप्त हुआ था।

[सं. एल-12012/27/2001-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 17th April, 2015

**S.O. 825.**—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 161/2001) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Dhanbad as shown in the Annexure, in the industrial dispute between the management of Bank of India and their workmen, received by the Central Government on 16.04.2015.

[No. L-12012/27/2001-IR(B-II)]

RAVI KUMAR, Desk Officer

**ANNEXURE****BEFORE THE CENTRAL GOVERNMENT  
INDUSTRIAL TRIBUNAL (NO. 2), AT DHANBAD****PRESENT : Shri Kishori Ram, Presiding Officer**

In the matter of an Industrial Dispute under Section 10(I) (d) of the I.D. Act, 1947.

**REFERENCE NO. 161 OF 2001**

**PARTIES :** The Arjun Prasad  
C/o Sh. Narayan Prasad.  
Tarengaga Gola, Kumhar Toli, Behind  
St. Jiseph School  
PO; Mssaurthi, Distt. Patna  
Vs.  
Zonal Manager,  
Bank of India, R Block, Chanakya Palace,  
Veer Chand Patel Marg Road, Patna 1.  
Ministry's Order No. L-12012/27/2001(IR)  
(B-II) dt. 18/22.06.2001

**APPEARANCES:**

On behalf of the Workman/Union : Mr. U.N. Lal,  
L d .  
Advocate.  
On behalf of the Management : Mr. D.K. Verma  
Ld. Advocate.  
State : Bihar  
Industry : Banking

**Dated, Dhanbad, the 6th Jan., 2015.**

**AWARD**

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec. 10 (1) (d) of the I.D. Act., 1947 has referred the following dispute to this Tribunal for adjudication *vide* their Order No. L-12012/27/2001-IR(B-II) dt. 18/22.06.2001.

**SCHEDULE**

"Whether the claim of the disputant Shri Arjun Prasad that he was engaged as a Sub-staff during the period from 1982 to 1987 continuously and worked at Zonal Stationery Office, Patna till 31.05.1994 on casual basis is factually correct. If so, whether the action of the Management of Bank of India, Zonal Manager, Patna in terminating the services of Shri Arjun Prasad on 01.06.1994 was justified? If not, what relief the workman is entitled to?"

On receipt of the Order No. L-12012/27/2001-IR(B-II) dt. 18/22.06.2001 the above mentioned reference from the Government of India, Ministry of Labour & Employment, New Delhi for adjudication of the dispute, the Reference Case No. 161 of 2001 was registered on 03.07.2001, and accordingly an order to that effect was passed to issue notices through the Registered Posts to the parties

concerned, directing them to appear in the Court on the date fixed, and to file their written statements along with the relevant documents. In pursuance of the said order, notices by the Registered Posts were sent to the parties concerned.

Both the parties made their appearances and filed their pleadings and photocopies of their documents. The Union and the O.P./Management through their own respective Ld. Counsels appeared in, and contested the case.

2 The case of workman Arjun Prasad as stated in his written statement is that he was originally appointed in Feb. 1992 against permanent vacancy. He was engaged on 4th Feb. 1982 in exigency as usually others as casual with issuing appointment letters who were regularized as per the Bank's Circular etc. The poor petitioner worked regularly and continuously directly under the control and supervision of the Bank's officials. He was initially paid his wage in his name but later on through his S.B. A/c No. 1049 at B.C.P. Marg at the instruction of Sri P.D. Daryani, the then Head of Stationery Department. The arrangements of perfect papers was made to camouflage the case of the petitioner. He had worked under the eleven several officials Messers K.R. Yagaik to U.K. Kumar of the Zonal Stationery Department during the period from 1981-94. Despite several times representation, the Management could not regularize him. When the workman began to demand for regular pay scale, he was illegally stopped from his duty *w.e.f.* 31.5.1994 without any reason and compliance of the mandatory provision of the Law. Finally, the petitioner raised the Industrial Dispute before the ALC ©, but the failure in its conciliation proceeding resulted in the reference for an adjudication. He remained engaged in the Zonal Office till 31.05.1994. The action the Management in terminating his services from 1.6.1994 was not justified, rather it was arbitrary, vindictive, anti-labour.

The workman in his rejoinder has specifically denied the allegations of the OP/Management as wrong, further stating that the workman had worked as the Sub-staff from 1982 to 1995 in the Bank.

3. Whereas the contra case of the OP/Management is that the reference is unmaintainable in law and in facts, that petitioner Arjun Prasad has stated in his complaint before the ALC©, Patna, on 11.1.2000 that he was continuously performing the routine job of the Sub-staff Cadre in the Bank from 1982 to 1987 and also worked at Zonal Stationery Office, Patna till 1994 on casual/Coolie basis. But the Management had represented before the ALC that he was never appointed in the Bank's service for performing the job of Sub-staff against the vacancy, rather as per the records of the Bank, he was occasionally engaged for 16 days in the year 1984 as a casual labour, and for total 134 days as a coolie during the years 1982 to 1995 in the different offices of the Bank. He was accordingly paid by the Bank his charges as a coolie, so he was not a workman



under Sec. 25B of the Industrial Dispute Act 1947, and likewise, it is not an industrial dispute u/s 2 K of the Act, rather it is an individual one. Moreover, non-engagement of a Coolie does not amount to discharge, dismissal, termination. The Bank as a State under the Article 12 of the Constitution of India has to observe the procedure of employment under the public policy under the Articles 14 and 16 of the constitution. The workman has never completed 240 days in any year. So section 25 F of the Industrial Dispute Act 1947 is inapplicable to the present case. The working of the petitioner as a Badli Coolie was for 13,57,24,63,3,19 and 3 days during the years 1984, 1986 to 1990 respectively. The present Industrial Dispute raised after a lapse of several years is unmaintainable as stale one. None of the recognized Union sponsored the case.

The OP/Management in their rejoinder has categorically denied all the allegations of the workman.

#### FINDING WITH REASONS

4. In the instant reference, WWI Arjun Prasad for himself and MWI Awadhesh Kumar Mishra for the OP/Management have been examined respectively.

Mr. U.N. Lal, Learned Advocate for the workman has submitted that he regularly served a daily wager as a Badli Sepoy as per the payment of his daily wages (Ext. W.2) through his bank A/c (Ext. W.3); the Management pointed out his attendances for 84 to 90 days as also admitted under para 10 of the written statement, and the workman had regularly worked as a coolie, so he is entitled to regularization in the service of the Bank. On the other hand, Mr. D.K. Verma, Learned Counsel for the OP/Management has contended that as the very terms of the reference *prima facie* appear to be a great vague over the years 1982-87; since the workman has admittedly worked casually, and has not completed 240 days attendance in a due calendar year, so he is not entitled to any relief.

After hearing the arguments of both Learned Counsels for the parties concerned, on perusal of the materials available on the case record, I find there is no dispute that the workman was casually engaged and paid as a coolie, but irregularly for 134 days during the years 1984 to 1990. It also appears no dispute that he never completed as a regular worker for 240 days in a due calendar year; moreover, admitted he was not appointed by the Management of the Bank, so the point of alleged termination does not hold good with the case the casual worker.

In result, it is hereby, awarded that the claim of disputant Arjun Prasad about his engagement was a Sub-Staff during the period of 1982 to 1987 continuously and his working at Zonal Stationery Office, Patna, till 31.05.1994 on casual basis is factually totally incorrect. Since the worker was purely a casual but irregular coolie, so no point of his alleged termination u/s 25 F of the I.D. Act 1947 applies. Hence, no question as to the alleged action of the

Management of Bank of India, Zonal Manager, Patna in terminating the worker on 01.6.1994 as justified or unjustified arises. Therefore, the workman is not entitled to any relief.

KISHORIRAM, Presiding Officer

नई दिल्ली, 17 अप्रैल, 2015

**का.आ. 826.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार कोलकता पतन न्यास के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कोलकता के पंचाट (संदर्भ संख्या 38/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16/04/2015 का प्राप्त हुआ था।

[सं० एल-32011/3/2003-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 17 April, 2015

**S.O. 826.**—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 38/2003) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Kolkata as shown in the Annexure, in the industrial dispute between the management of Kolkata Port Trust and their workmen, received by the Central Government on 16/04/2015.

[No. L-32011/3/2003-IR(B-II)]

RAVI KUMAR, Desk Officer

#### ANNEXURE

#### CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL

#### AT KOLKATA

#### Reference No. 38 of 2003

**Parties:** Employees in relation to the management of Kolkata Port Trust

AND

Their workmen

**Present:** Justice Dipak Saha Ray,  
Presiding Officer

#### Appearance:

On behalf of the Management : Mr. M.K. Das, Industrial Relations Officer

On behalf of the Workmen : Mr. Subrata Majumdar the concerned workman in person

State : West Bengal

Industry : Port & Dock

Dated 12th March, 2015.

### AWARD

By Order No. 32011/3/2003-IR (B-II) dated 11.11.2003 the Government of India, Ministry of Labour in exercise of its powers under Section 10(1)(d) and (2A) of the Industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication:

"Whether the action of the management of Kolkata Port Trust in denying pension/pensionary benefits to Shri Subrata Majumder, Ex-Head-Clerk, Finance Department is legal and justified? If not, what relief the concerned employee is entitled to?"

2. The case of Shri Subrata Majumdar is, in a nutshell, as follows:

The concerned employee Shri Subrata Majumder was appointed in Calcutta Port Commissioner (Presently named as Kolkata Port Trust) service on 30.10.1957 and after two years of his service he became the member of Contributory Provident Fund Scheme. He retired from service on 31.07.1997 while he was Head Clerk of Finance Department. On the date of his retirement he opted for Pension Scheme in terms of FA. & C.A.O's circular No. Fin/133P dated 05.05.1997 vide his application dated 31.07.1997. But the said prayer was rejected on the ground that he retired after 09.01.1997. Subsequent representations of Shri Majumder were also not considered. Accordingly the concerned person raised industrial dispute. Hence this reference.

3. As regard this, the management has opposed the claim by filing written statement contending *inter alia* that Shri Majumder retired on 31.07.1997 while he was Head Clerk and being a Head Clerk Shri Majumder was holding supervisory position and was getting monthly emoluments of more than Rs. 1600/- per month. \*\*\*Shri Majumder on his last working day *i.e.* on 31.07.1997 exercised his option for switching over from Contributory Provident Fund Scheme to Pension Scheme though he had to exercise his option three (3) months before his superannuation as per Government Order No. PW/PEX 73/79 dated 08.07.1988 (Ex M-06) which was circulated vide Circular No. 604 P dated 05.08.1986 issued by the officer of the Financial Adviser and Chief Accounts Officer (Ext. M-05). Accordingly, the option of Shri Majumder for switching over to Pension Scheme was not accepted by the management. The management has accordingly prayed that the instant reference may be answered in the affirmative.

4. Union in support of its case examined two witnesses including Shri Subrata Majumder a WW-01 and has proved some documents marked Exts. W-01 to W-15.

5. The Management has also examined one witness and proved some documents marked Exts. M-01 to M-07.

6. It is argued on behalf of the management that the

union raised industrial dispute and accordingly this reference was initiated. Subsequently union stopped conducting the case. Thereafter on the prayer of the concerned person, Shri Majumder, Tribunal allowed him to represent this case. It is submitted that since the union is no more a party to this proceedings, present dispute cannot be termed as an industrial dispute as per the provision of Section 2(k) of the industrial Disputes Act, 1947. It is further argued on behalf of the management that Shri Majumder who was Head Clerk at the time of his retirement and drew more than Rs. 1600/- per month, was employed in the supervisory capacity and as such he cannot be said to be a workman as per the provision of Section 2(s) (iv) of the Act.

It has been further argued that Shri Majumder opted for Pension Scheme beyond the time limit as mentioned in Government Order No. PW/PEX 73/79 dated 08.07.1986 (Ext. M-06) which was well circulated vide Circular No. 604 dated 05.08.1986 (Ext. M-05) and accordingly his option was not accepted.

7. Mr. Subrata Majumder concerned person, on the other hand, has submitted that as per the order dated 20.12.2010 of the Tribunal he has been made a party to this reference and has been allowed to conduct the case and as such Section 2(k) of the Act is not applicable. He has further submitted that the management has failed to establish that he being Head Clerk was employed in the supervisory capacity. It is also argued that one Jb. Nur Hossain who exercised option beyond the time limit of Government Order dated 08.07.1986 was allowed to opt Pension Scheme by the Chairman, Kolkata Port Trust and accordingly his (Shri Majumder) option for switching over to Pension Scheme is required to be accepted.

8. Seen the order dated 30.12.2010 of this Tribunal which reads; "Mr. Das, authorized representative of the management has submitted that since the present reference is in respect of the present applicant's claim, the management will not stand in the way to the prayer by the present applicant to be added as a party....."

9. From the said order it appears that as the management did not raise any objection Shri Majumder was added party in this reference and the statement of claim which bears the signature of Shri Majumder, was accepted as the statement of claim of Shri Majumder. The Said order even was not even challenged subsequently. So at this stage the management is not entitled to raise any objection in this regard.

10. It is alleged on behalf of the management that at time of retirement Shri Majumder was employed in the supervisory capacity and as such he was not a workman. Admittedly at the time of superannuation Shri Majumder was posted in the Finance Department as a Head Clerk and he drew more than Rs. 1600/- per month. So the management

is to establish that Shri Majumder was in supervisory capacity while he was posted as Head Clerk. But except the averment in the written statement, no evidence either oral or documentary, is forthcoming to substantiate the said contention of the written statement. It is also surprising to note that the management has even failed to corroborate the said statement by adducing any oral evidence. So it appears that the management has miserably failed to establish that at the time of superannuation Shri Majumder was employed in the supervisory capacity.

11. It is the case of Shri Majumder that as per Finance Department Circular No. Fin/133 P dated 05.05.1997 (Ext. W-06) he opted the Pension Scheme in time. But considering Ext. M-06 with reference to Exts. M-03 and M-04 (Finance Department Circular No. Fin/1123 P dated 10.02.1997 and Fin/27/P dated 04.04.1997 respectively), it appears that the said circulars were applicable to the persons who were in service on 01.01.1986 but retired on or before 10.02.1997. Shri Majumder retired on 01.08.1997. That being so, such circulars are not applicable to Shri Majumder in the matter of exercising option for Pension Scheme.

12. It further appears from Clause 52(1) of the Kolkata Port Trust Employees (Pension) Regulations, 1988 (Ext. M-07) that "on the commencement of these regulations, every rule or order in force immediately before such

commencement shall, cease to operate."

Ext. M-07 does not also provide any time limit for exercising option for switching over from Contributory Provident Fund to Pension Scheme.

13. In view of such circumstances, Circular No. 604 P dated 05.05.1986 [Ext. M-05 wherein the employees were allowed to opt the Pension Scheme three (3) months before the date of retirement] was also not applicable to Shri Majumder.

14. From Exhibits W-14 and W-15 it is evident that one Jb. Nur Hossain opted for Pension Scheme beyond the alleged prescribed time limit. But even then he was allowed to opt such Pension Scheme by the Chairman, Kolkata Port Trust. Shri Majumder stands on the same footing with Jb Nur Hossain and for the said reason Shri Majumder ought to have been allowed to opt the Pension Scheme.

15. Accordingly Shri Subrata Majumder is entitled to Pension on refunding the employer's contribution of Contributory Provident Fund with interest prevailing at the relevant time when Shri Majumder received the employer's contribution.

Justice DIPAK SAHA RAY, Presiding Officer

Dated, Kolkata,

The 12th March, 2015